

Yes
Retirement-Benefit

20

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 50/87

~~XXXXXX~~

DATE OF DECISION 28-8-1991

Shri S. Tripathy Petitioner

Party in Person Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mr. Jayant Patel for respondent No. 1 Advocate for the Respondent(s)
Mr. Anil Dave for respondent No. 2

CORAM

The Hon'ble Mr. M.M. Singh

: Administrative Member

The Hon'ble Mr. R.C. Bhatt

: Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? Yes
4. Whether it needs to be circulated to other Benches of the Tribunal? No

Shri S.Tripathy
Ex-Member of Indian
Administrative Service
A/7/1 Elite Apartments,
Shahibaug, Ahmedabad.
(Party in person)

27

: Applicant

Versus

1. Union of India
Through:
The Secretary, Deptt. of
Personnel and Training
Government of India,
North Block, New Delhi.
2. The State of Gujarat,
Through:
The Chief Secretary to the
Govt. of Gujarat, G.A.D.,
Sachivalaya, Gandhinagar.

: Respondents

(Advocate: Mr. Jayant Patel
for Respondent No.1 &
Mr. Sandip Shah for Mr. Anil Dave
for Respondent No.2)

J U D G M E N T

O.A./50/87

Date: 28.8.1991

Per: Hon'ble Mr. R.C.Bhatt

: Judicial Member

1. The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs against the respondents:-

- "(A) To direct the Union of India and the State of Gujarat to treat the resignation of the applicant as non-est and to treat the applicant to have continued in IAS till 31.7.1986.
- (B) To direct the Union of India and the State of Gujarat to grant the retiral benefits as would be available to a Member of the Indian Administrative Service retiring after 20 years of service with effect from 1.8.1986 and in addition, they should be directed to grant leave encashment equivalent of 6 months' leave to the applicant and such other retiral benefits as available to the retired Member of the IAS.
- (C) To award the cost of this application to the applicant.
- (D) To grant any other and further relief as may be deemed just and proper in the circumstances of the case."

28

2. It is alleged by the applicant in the application that he was recruited to IAS cadre in 1966 and he was entitled for his promotion to the selection Grade along with his batchmate and in his turn, he should have been promoted to the selection grade when his junior was promoted on 6.3.1981. It is also alleged by him that he should have been promoted to the super time scale of IAS w.e.f. 1.11.1983. According to the applicant, by a series of malafide action, the Govt. of Gujarat i.e. Respondent No.2 harassed him and denied his rightful promotion to selection grade and super time scale in his turn, that therefore he had submitted series of representations to the authorities in Govt. of India i.e. Respondent No.1 and also to the authorities in the Govt. of Gujarat i.e. Respondent No.2 since 1975. It is alleged that the Govt. of India had decided to change the cadre of the applicant, as continuance of the applicant in the Govt. of Gujarat was not in the interest of his service, that the decision of the Govt. of India would bear testimony to the reasons why the Govt. of India had decided to transfer the applicant out of Gujarat cadre, that in the case of applicant his name was never circulated to his home State i.e. Orissa for absorption, that finally the Govt. of India decided to transfer the applicant to Union Territories cadre which is under the administrative control of the Govt. of India. It is further alleged by the applicant that for reasons best known to the Govt. of India, the decision of one wing of the Ministry of Home Affairs to transfer the applicant from Gujarat cadre to Union Territories Cadre could not find favour with another wing of the Ministry of Home Affairs which was the cadre controlling authority of Union territories cadre and as a result, the applicant could not be transferred out of Gujarat. It is further alleged by the applicant that as he found that his fundamental rights have been violated, he could not continue in service under the Administrative control of the Govt. of the Government of Gujarat with dignity and self respect and the

was constrained to submit his letter dated 10.1.1984 in which he made reference to all the previous correspondence and made a prayer to the Govt. of India to promote him to the selection grade as well as to the super time scale from the date his next junior was promoted to such scales or grant full retiral benefits to the applicant, that in the event the Govt. of India could not accept either of the two alternatives, his letter dated 10.1.1984 should be treated as letter of resignation and he should be allowed to resign IAS. The President of India was pleased to accept the resignation of the applicant with effect from 24th July, 1984. It is alleged by him that he had filed Special Civil Application in the High Court of Gujarat for his promotion to the selection grade and super time scale, that the said Special Civil Applications were disposed of by the High Court of Gujarat on 29.11.1984 upholding his contention. The respondent No.2 moved the Hon'ble Supreme Court of India by filing appeals against the judgment of the High Court of Gujarat but the said appeals were dismissed with costs on 14.3.1986 with the direction to the respondent No.2 to grant promotion to the applicant from the date of his next juniors were promoted.

3. It is the case of the applicant that on vindication of his contention both by the High Court of Gujarat and the Hon'ble ^{Supreme} Court of India, he moved the respondents to give a posting to him as the resignation given by him being not voluntary should be considered nonest and the applicant sought voluntary retirement with completion of 20 years of service with effect from 1st August, 1986 and made it clear to the respondents that in case they gave posting to the applicant, he would be obliged to serve till 31.7.1986 but the said request of the applicant was turned down by respondents. The applicant has alleged that the respondents by sheer misuse of their authority accepted the resignation and did not do justice to the applicant and that the action

90

of respondents was violative of Articles 14 and 16 of the Constitution of India. It is further alleged that the action on the part of the respondents is malafide one and they have practised fraud upon the applicant and from that point of view the decision of the respondent No.1 dated 24th July, 1984 is void.

4. It is alleged by applicant that even assuming the decision of the respondent No.1 dated 24th July, 1984 as voidable, the applicant could get the right only after the decision of the High Court of Gujarat dated 29.11.1984 and the period of limitation would be counted only from the date of accrual of right to apply and it is the right to apply that gives start to the running of the prescribed period of limitation and when the right to apply does not accrue, there is no start of running of the limitation and no question of bar of limitation arises in such a case. It is alleged further that the respondents had filed Special Leave Petition before the Hon'ble Supreme Court of India against the decision of the High Court of Gujarat and the hands of the applicant were tied because of the stay from the Hon'ble Supreme Court of India and he could not proceed with the matter till the Hon'ble Supreme Court of India disposed of the case by the judgment dated 14.3.1986 and when he came to know about the judgment from the newspapers on 15.3.1986 and then applied for the copy of the judgment on 17.3.1986 which was ready by 19.3.1986 and the same was forwarded to the applicant on 4.4.1986, that thereafter on 9.4.1986 he made representation to the respondents. He has also averred that as the order against which the grievance arose was made within three years prior to the establishment of this Tribunal and as the representation was pending prior to the expiry of six months from the date of establishment of this Tribunal, the application is within time under Section 21 of Administrative Tribunals Act, 1985.

51

5. The respondent No.1, Union of India has filed reply contending that the application is misconceived, filed with an ulterior motive and is an after thought. It is contended that the application is barred by principles of resjudicata. It is contended that the resignation of the applicant was accepted vide notification dated 24th July, 1984. It is contended that in a comprehensive representation dated 10.1.84, the applicant had requested that he should be promoted to the selection grade/super time scale from the date of promotion of his juniors or he should be allowed to retire from service with full retirement benefits as if he has completed full service upto superannuation or if the said principles were not accepted, he should be allowed to resign. It is contended that the applicant's said resignation was conditional and the respondent No.1 could consider only unconditional letter of resignation duly recommended by the respondent No.2 with vigilance clearance, no due clearance etc. It is contended that, thereafter, in another letter dated 3.2.1984, the applicant reiterated that in case it was not possible on the part of respondent No.1 to do justice to him, he should be relieved from service after expiry of earned leave from 11.4.1984 to 1.8.1984 whichever was earlier, that this letter was followed by another letter dated 22.2.1984 in which the applicant represented that in case respondents could not decide to give him promotion or full retirement benefits, he should be allowed to retire from IAS and his decision in this regard was final. It is contended that the respondent No.1 in its letter dated 23.6.1984 to the respondent No.2 expressed doubt that the resignation was conditional and hence requested an unconditional letter of resignation if the applicant wanted to resign from the service. The applicant by letter dated 1.8.84 stated that as per fundamental rights guaranteed under Articles 14, 16 and 21 of Constitution of India, he could not be forced to serve if he did not want to serve and that

Res

52

resignation should be accepted and he should be relieved from IAS on or before 28.6.1984, that in subsequent letter dated 11.7.84 the applicant stated that the Special Civil Application filed by him should not be construed to mean that he wanted to continue in IAS and further stated that he did not want to serve any more as it was not possible to serve with self respect and his decision to quit was final. The respondent No.1 contended that these letters would show that the applicant had made up his mind to resign from the IAS without any condition and after having resigned voluntarily, it is not open for him to make any grievance against the acceptance of his resignation.

6. The respondent No.1 has further contended that the Special Civil Application filed by the applicant regarding his promotion to Selection Grade/Super Time Scale was allowed by the High Court of India which directed the respondent No.2 to give the applicant selection grade with effect from 6.3.1981 and supertime scale with effect from 1.11.1983. It is contended that thereafter, on 9.4.1986, the applicant represented that his resignation from the service was not voluntary and that it was forced upon him and the same should be considered nonest, that the applicant's representation was examined in detail and the same was rejected on the grounds mentioned in para 5 (a), to (d) of the reply. It is contended that, thereafter, also the applicant again represented saying that his letters dated 12.6.1984, 11.7.1984 and 14.7.1984 referred to his earlier letter dated 10.1.1984 and the said letters were an outcome of his violation of his fundamental right and they could not be treated in isolation of his original letter dated 10.1.1984. It is contended that the contentions of the applicant were not accepted and his representations were turned down. It is contended that the acceptance of the resignation of applicant was legal and valid.

23

7. The respondent No.1 has denied the allegations of any malafide practiced by respondent No.1 against the applicant. It is contended that the applicant's request to treat his resignation as non-est was not accepted for the detailed reasons narrated in paras 7(a) to (f) of the reply.

8. The respondent No.1 has also contended that the application is not within the time. It is contended that the contention of the applicant that the decision of the Govt. of India dated 24.7.1984 being voidable, the applicant could get the right only after the decision of High Court of Gujarat is misconceived and untenable at law. It is denied that the authorities by malafide exercise of their power have accepted the resignation of the applicant as alleged. It is also denied by the respondent No.1 that there is no bar of limitation in this case. It is contended that the applicant has not exhausted all other remedies available under the rules and therefore, the present application is not maintainable in view of provision of Section 20 of the Administrative Tribunals Act, 1985.

9. It is contended by respondent No.1 that the applicant after his resignation joined the Bar and has been practising as an advocate since then, that after the resignation was accepted w.e.f. 24.7.1984, this application is filed as late as 27.1.1987 i.e. more than 2 ½ years after the acceptance of his resignation, which clearly shows that this is an after thought. It is contended that the applicant is not entitled to any relief as prayed for, and the application deserves to be dismissed.

10. The respondent No.2 has filed reply contending that the application is thoroughly misconceived. The respondent No.2 has contended that the applicant had submitted his resignation and the President of India accepted his resignation from IAS with effect from 24.7.1984.

24

It is contended that the resignation of the applicant was unconditional. The respondent No.2 has given the reasons for not reconsidering the decision regarding acceptance of resignation. It is contended that the resignation was given by the applicant by letter dated 12.6.1984 and had the applicant any intention not to resign, he would have made some submissions before the Hon'ble Supreme Court at the time of hearing because the Hon'ble Supreme Court heard the appeals on 11 & 12.3.1986.

11. The respondent No. 2 has contended that the application deserves to be dismissed on the ground that it is barred by limitation as per provision of Section 21 of the Administrative Tribunals Act, 1985.

12. With reference to para 5(A) to 5(L) of the application, the respondent No.1 has contended that the applicant was not found fit by the respondent State Govt. for granting the selection grade and super time scale but ultimately the Hon'ble Supreme Court held that the applicant was entitled to the promotion claimed by him and therefore the applicant was given the said promotions. It is contended that the allegations made by the applicant that he was subjected to continued harassment are misconceived and false. So far as the transfer of the applicant was concerned, it is contended that it was for the Govt. to decide as to where he should be posted and it was not proper on the part of the applicant to disobey the order of his transfer and to proceed on leave with an intention to avoid a posting not of his liking. The respondent No.2 has denied that the actions on the part of respondents, were either malafide or that the respondents have practised fraud on the applicant. It is further contended that the applicant now cannot be permitted to submit that he never wanted to resign. It is contended that after acceptance of resignation as applied by the applicant, the applicant could not raise a plea that he would not have resigned if he would have been promoted to the selection grade or super time scale. It is contended that upon acceptance of his resignation, the relations of employer



employee between the respondents and the applicant had come to an end and the applicant cannot pray for revival of the said relationship to have more financial benefits. It is contended that the representations made by the applicant were duly considered by the respondents and only after due deliberation and careful consideration, the respondent had taken final decision with regard to resignation of the applicant. It is denied by the respondent No.2 that this applicant has any right to remain in Govt. service after his resignation was accepted. It is contended that now the applicant has no right to come back to service and retire voluntarily and is not entitled to any of the reliefs prayed for and the application to be dismissed.

13. The applicant has filed rejoinder to the reply filed by respondents and has controverted the contentions taken by the respondents.

14. The first point which arise for consideration is whether the application is barred under Section 21 of the Administrative Tribunals Act, 1985. The respondents have contended in their irrespective reply that the application is not filed within the period prescribed under Section 21 of the Administrative Tribunals Act and hence it should be rejected on that ground alone. The applicant in his application has mentioned that he could not challenge the resignation until and unless he proved his eligibility of promotion to super time scale and that his eligibility was established from the judgment of the Hon'ble Supreme Court in Civil Appeal Nos. 2796/85 and 2797/85 decided on 11.4.1986. The applicant submitted that he had filed Special Civil Applications in the High Court of Gujarat being No.3410/80 and 3452/84, the first of the two petitions was for claim for selection grade and the second one was for claim for the super time scale. The High Court of Gujarat had allowed the

56

Special Civil Applications by issuing a direction the State Govt. to reconsider the case of the applicant in the light of the observations made in the judgment. The State of Gujarat preferred the appeals before the Hon'ble Supreme Court of India and the appeals were finally disposed of in March, 1986 by which the appeals were dismissed. The applicant has mentioned in his application that this Tribunal was established on 1st November, 1985 but at that time his hands were tied on account of the stay order of the Hon'ble Supreme Court and therefore he could not file the present application and he has filed this Original Application within one year after the receipt of the certified copy of the judgment of the Hon'ble Supreme Court on 7.4.1986 and ~~after~~ he submitted his representations to respondent No.1 dated 9.4.1986. This Original Application is filed on 27.1.1987. We are not impressed by the submission of the applicant that he was entitled to file this application within one year after the decision of the Hon'ble Supreme Court in appeals filed by the State Govt. against the judgments given by the High Court of Gujarat, for the simple reason, that the applicant has to file the application within the period of limitation prescribed under Section 21 of the Administrative Tribunals Act speaks ~~ab~~ about the other remedies which should be exhausted by the party before he files the application under Section 19 before the Tribunal. It is not in dispute that the President of India had accepted the resignation of the applicant with effect from 24.7.1984 and the notification was to that effect published in the gazette in para-1 Section (2) of the Gazette of India on 24.7.1984, the copy of which was also forwarded to the applicant through Chief Secretary, Govt. of Gujarat. The Notification is dated 24.7.1984 and it can be presumed that the applicant must have received the copy within atleast a week i.e by the end of July, 1984. In the instant case, his main grievance is that the resignation submitted by him was

9

not voluntarily given by him and his main relief is to direct the Union of India and the State Govt. of Gujarat to treat the resignation as non-est. Therefore, he ought to have filed application under Section 19 of the Administrative Tribunals Act 1985 challenging the said notification within the time limit prescribed under Section 21 of the Act. We do not agree with him that he could not have filed this application till the decision was given by the Hon'ble Supreme Court.

15. The other submission of the applicant is that he had to exhaust the alternative remedy provided under Section 20 of the Administrative Tribunals Act prior to coming to this Tribunal and as he had submitted his representations dated 9.4.1986 produced at Annexure M, he could approach this Tribunal within one year from the disposal of the said representation or within one year from the date of expiry of six months of the said representations and he having filed this application on 27.1.1987, the same is within the period of limitation prescribed under Section 21 of the Administrative Tribunals Act. The applicant submitted that under Rule 25 of Central Civil Services Rules, he could present memorial or representation within three years from the date of the final order and in this case the order accepting his resignation was made on 24.7.1984, therefore, he could have waited upto 24.7.1987, and hence also this application is within time. The learned advocate for the respondents submitted that the representations or the memorial under that rule should have been to the President of India and not to the authorities to which the applicant has made representations on 9.4.1986. It is submitted that the representation was made to the Secretary,

ms

28

Department of Personnel and Administrative Reforms, Govt. of India and to the Chief Secretary to the Govt. of Gujarat. General Administration Department, hence this representation cannot be considered as a statutory representation under Section 20 of the Administrative Tribunals Act.

16. The final order of acceptance of resignation was made on 24.7.1984 and the representations made by applicant on 9.4.1986, in our opinion, not being a statutory representation as per rules, this application is not within the period of limitation as per Section 21 of the Administrative Tribunals Act. In this case, Section 21 Sub-Section (2) of the Act will apply because the grievance had arisen on the order dated 24.7.1984 which was passed within the period of three years immediately preceding the date of 1st November, 1985 when the Tribunal assumed power, authority and jurisdiction. It is not in dispute that the applicant had not taken any proceeding for redressal of his grievances before the said date before any High Court. In the instant case, when the order of acceptance of resignation was ~~xx~~ passed by the President on 24.7.1984, this Act had not come in to operation, hence Section 21 (1) of the Act will not apply. As this Tribunal was set up on 1.11.1985, the applicant should have filled application under Section 19 upto 1st May, 1986^m i.e. within six months from 1.11.1985 as per Section 21 (2) of the Administrative Tribunals Act. The applicant has submitted that if there is delay in filing this application, there are sufficient ground for condonation of delay namely that he had already made representation on 9.4.1986, that the appeals filed by the respondents were also pending before the Hon'ble Supreme Court which may also be considered as ^{that the} sufficient reason for condonation of delay. We are satisfied [/] grounds mentioned in the application are sufficient for condonation of delay and we condone the delay of period from 1.5.1986 to 27.1.1987 under Section 21 (3) of the Act

ms

and treat the application within time.

17. Now coming to the merits of the case, the point that require to be considered and decided is whether the resignation of the applicant can be treated as non-est and if it is so, what is its effect? It would not be out of place to give the short history of litigation in this matter. The applicant Shri S. Tripathy was recruited to the Indian Administrative Service in 1966 and allotted to the State of Gujarat. According to the applicant, he was working as Assistant Collector at Petlad in August 1968, but he earned displeasures of his superiors specially the displeasures of one Shri H.S.L. Capoor the then establishment officer to the Government of India and then Chief Secretary of State of Gujarat. It is also the case of the applicant that Shri Capoor was prejudiced against him and so year after year in his confidential report, he would repeat the observations "not yet fit for promotion" and "needs to be watched" despite the good remarks and satisfaction earned by the applicant from other superior officers. The applicant has produced the proceeding of the Selection Committee dated 21st August, 1980, 6th March, 1981, 28th July, 1981, 29th December, 1981 and 4th May 1983. According to the applicant, he was passed over for the promotion to selection grade on 21st August, 1980, 6th March, 1981 by the Selection Committee presided over by the then Chief Secretary, Shri H.K.L. Capoor and he questioned the action of the Govt. by filing Special Civil Application No. 3410/80 in the Hingh Court of Gujarat. The Selection Committee which met on July 28, 1981, December 29, 1981^{and} May 4, 1983 deferred the question of promotion of the applicant to the Selection Grade and the question of promoting him to the Super Time Scale was not considered as he had not at that time been promoted to the selection grade. On February 1, 1984, the applicant was promoted to the selection grade w.e.f. 1.4.1983, that on 28.6.1984 the Selection Committee decided that he was 'not fit' for promotion to the super time scale whereupon he filed Special Civil Application

10

No.3452/84. The High Court of Gujarat heard both the Special Civil Applications made by the applicant and found that the earlier decision to deny and defer giving the selection grade to the applicant and the decision to deny super time scale to him were swayed by extraneous considerations and both the writ petitions were allowed and the State Govt. of Gujarat was directed to consider afresh the question of promotion of the applicant to the selection grade as well as to the super time scale and to give the applicant the monetary benefits to which he would be entitled on such afresh consideration. The applicant has produced the copy of the judgment of the High Court dated 19.11.1984 Annexure 'G'.

18. The State of Gujarat obtained Special Leave from the Hon'ble Supreme Court under Article 136 of the Constitution of India and preferred the Civil Appeal Nos. 2796/85 and 2797/85 against the judgment of High Court of Gujarat. Reading the judgment of the Hon'ble Supreme Court of India in those appeals produced at Annexure 'H', it is found that the said appeals were filed more to vindicate Mr.H.K.L.Capoor against whom certain caustic observations were made by the High Court of Gujarat, rather than the decision on the merits of the case. The senior counsel Mr.S.T.Desai, appearing for the State of Gujarat had submitted before the Hon'ble Supreme Court of India, at the time of hearing of these two appeals, that the State of Gujarat was prepared to abide the directions given by the High Court of Gujarat in its judgment. The Hon'ble Supreme Court, therefore, only considered the limited question whether Shri H.K.L.Capoor acted bonafide and whether the High Court would or would not have passed the strictures that it did against Shri Capoor in its judgment. It appears from the judgment that Mrs.Capoor had not filed

affidavit against the allegations made against him in the writ petitions filed in the High Court but the same was filed before the Supreme Court of India in the above two appeals and in view of that affidavit, their lordships of the Supreme Court observed that there was no reason to doubt the bonafides of Shri Capoor and their Lordships agreed with the statement in the affidavit of Shri Capoor that the High Court might not have passed the strictures had the affidavit of Shri Capoor been before them. The Hon'ble Supreme Court ultimately held that instead of directing the Govt. of Gujarat to consider afresh the claim of the applicant for promotion to the selection grade and the super time scale, the applicant should have been given selection grade with effect from 6.3.1981 and the super time scale with effect from 1.11.1983 and in the result Hon'ble Supreme Court directed the Govt. of Gujarat to give the consequential monetary benefits.

19. It further appears that during pendency of Special Civil Applications Nos. 3410/80 and 3452/84 against the respondents in the High Court of Gujarat, the applicant had entered into correspondence with the respondents. The grievance of the applicant was that his batchmates were promoted in the year 1980, while he was superseded and juniors to him were promoted on 6.3.1981. The allegations of the applicant were that by a series of acts of malafides, of the State/Gujarat has harrassed him, that though he could prove his merit whenever there was any objective test, his merit was not properly assessed and on the contrary the achievements even were not recorded in his C.Rs. The applicant's further allegation is that his batchmates were promoted to super time scale on the basis of assessment on 4.5.1983 and on that day the Selection Committee met to consider the suitability of officers of 1970 batch for

12

promotion to selection grade and suitability of officers of 1966 batch for promotion to super time scale, but while considering suitability of the applicant for promotion to selection grade, the committee kept the issue open and immediately thereafter overlooked the applicant for promotion to super time scale on the ground that the applicant was not promoted to selection grade. The minutes of the meeting are at page 339, 343 and 344 of the record of this case. The applicant has also given other instances of harassment to him by the respondents. Ultimately, the applicant wrote a letter dated 10.1.1984 produced at Annexure -B in which he has made reference of 27 previous letters. As per this letter dated 10.1.1984 ^{he} gave three alternatives to the Union of India (a) to promote him to selection grade and super time scale of IAS from the date on which his next junior has officiated in the said scale or (b) to allow him to retire from the IAS with full retirement benefits or (c) in the event of (a) or (b) not acceptable to Government of India, this letter should be treated as a letter of his resignation and he should be relieved from service w.e.f. 11.8.1984. He has also mentioned in that letter that if Government of India could not decide by accepting either proposal (a) or (b), his decision to resign from service on the ground of inability on the part of Government of India to ensure justice would be final and he would not be available for service after 11.4.84.

from which date he would proceed on earned leave and he should be treated to cease to be in service on exhaustion of earned leave or 1st August, 1984 whichever was earlier. The applicant was, thereafter, promoted to selection grade with retrospective effect from 1.4.1983 and was also transferred. The applicant on 22.2.1984 wrote a letter of resignation produced at Annexure "D" in which he intimated that he has finally decided not to continue in IAS if he was not given

promotion to super time scale of IAS pay prior to 10.4.1984. He also mentioned therein that he had no alternative but to proceed on leave, as the post where he was transferred being one which could not be upgraded to super time scale and he could not take over the said post for 45 days as the same was neither in the interest of the post nor in his own interest. He also mentioned therein that in case the Government of Gujarat would feel that the applicant should continue in service, he should be promoted and recalled from leave. This was followed by another letter produced at Annexure "E" dated 28.2.1984 addressed to one Shri Agrawal, the then Secretary, Deptt. of Personnel and Administrative Reforms, New Delhi. In this letter, he has mentioned that his decision not to continue in service, if he is not given the promotion to super time scale of IAS pay by 10th April, 1984, remains unchanged and that the Government of India should decide his case as early as possible. It was followed by the next letter dated 2.3.1984 produced at Annexure 'F'. He has mentioned in this letter that after the direction of the High Court of Gujarat while disposing of the C.A. No. 2244 of 1981 and C.A. 2542 of 1981 in Special Civil Application No. 3410/80 filed by him the Government of Gujarat has not decided his suitability of promotion to selection grade and higher grade. He requested to consider his case of promotion to super time scale as the issue of selection grade was decided after 4.5.1983. In para 4 of this letter, he has stated that now the Committee has found him suitable and he was thankful to the Committee that the Committee has done justice to him but he should have been given selection grade w.e.f. 1.1.1982. He further stated that the Government should decide his promotion to super time scale and recall him from leave and requested the Government to take an early

111

decision to promote him to super time scale of IAS pay. The applicant has submitted that as there was no response from the authorities, he filed Special Civil Application No. 1773/84. The judgment given by the High Court of Gujarat in Special Civil Application No. 3410/80 decided along with the Special Civil Application No. 3452/84 on 29.11.1984 is produced at Annexure 'G'. The applicant has taken us through the judgment of the Hingh Court of Gujarat.

20. During the pendency of the above two Special Civil Applications before the High Court of Gujarat, the applicant wrote another letter dated 12.6.1984 styled as "Resignation from IAS " produced at Annexure 'J' in which his previous letter dated 10.1.1984 is referred. He has mentioned in this letter that he had been on leave from 1.3.1984 as he did not want to serve on a lower post and that the maximum period of earned leave that could be sanctioned to him is getting over on 28.6.1984, that he had been repeatedly saying that he would not continue in service if he was not granted promotion to super time scale in IAS and that he has brought to the notice of all the concerned malafides involved in his case, that he could not accept such humiliting proposition and so his decision to quit IAS was final. He has also mentioned in the said letter that he could not be forced to serve if he did not want to serve when it was not possible for him to continue in IAS and his resignation should be accepted and he should be relieved from IAS on or before 28.6.1984. He has mentioned further in that letter that he wanted to join the Bar enrolling himself as an advocate and he could not apply for the same without a certificate of relief from IAS and any delay to relieve him from IAS would result in preventing him from accepting any other profession and the Government of India would be liable to pay damages for causing injury to his

IS

income. Lastly he has mentioned in that letter that if he is not relieved from IAS, he would be constrained to approach appropriate court to enforce his fundamental rights.

21. The Government of India in a letter produced at Appendix-III, page 188 wrote letter to the Chief Secretary to the Government of Gujararat with fererenceto the State Government's letter dated 23.3.1984 that the points raised by the applicant in his representations dated 10.1.1984, 3.2.1984 and 22.2.1984 were considered by the Government of India carefully, that as regards the request of the applicant treating his letter dated 10.1.1984 as his resignation from service, the same being conditional and as such the same could not be accepted, and the attention was invited to Department's wireless message dated 12.4.1984. In the last para of this letter, it was suggested ~~that~~ a decision on the request of the applicant for giving him promotion to the selection grade and super time scale from the date his junior was given promotion might be taken expeditiously and thereafter the applicant might be advised to submit an uncondintional letter of resignation if he wanted to do so. The applicant wrote another letter dated 11.7.1984 produced at Annexure 'K' showing the subject "Resignation from IAS" in which in the opening portion it is mentioned that if the Govt. is not able to do justice, they should not further do the injustice by preventing the applicant from taking up alternative employment or profession, that he had clarified time and again that if he could not be promoted to the super time ~~scale~~ in IAS by 10.4.1984, he would not be available for service and that he had requested specifically in his letters dated 5.6.1984, 12.6.1984 and 29.6.1984 to relieve him from IAS by 28.6.1984 the day on which his leave was to expire. He has further mentioned in his letter addressed to the Secretary, Department of Personnel and Administrative Reforms, Ministry of Home Affairs, New Delhi that inspite of his repeated request, no action has been taken and he was unable to take

16

up alternative employment/profession unless he was relieved from IAS, that he had even intimated the Govt. that he would like to enroll himself as an advocate and without a certificate of relief from IAS, he could not join the Bar. He has also mentioned in this letter that his filing of the Special Civil Application No.3452/1984 should not be construed to mean that he wanted to continue in IAS and he did not want to serve any more as it was not possible to serve with self respect and his decision to quit is final. He has also mentioned in it that the Govt. was duty bound to relieve from service when he did not want to serve. Lastly he stated in this letter that his resignation should be accepted immediately and he should be relieved from IAS forthwith, that he should be granted suitable compensation or salary from 28.6.1984 till the date of relieve from IAS and in no case the date of relieve be extended beyond 28.7.1984 and if he was forced to be without alternative employment and income beyond 28.7.1984, he would seek appropriate relief which would include compensation for loss of income by approaching appropriate High Court or Supreme Court of India he had been told by the Chief Secretary Govt. of Gujarat to take up directly with the Govt. of India for acceptance of his resignation. The President of India was pleased to accept the resignation of the applicant as appears from the copy of the notification dated 24.7.1984 Annexure 'L' which reads as under:-

"The president is pleased to accept the resignation of Shri S.Tripathy, a Member of the Indian Administrative Service borne on the cadre of Gujarat, from the Indian Administrative Service with immediate effect".

The copy was forwarded to the Chief Secretary to the Govt. of Gujarat and to the other departments and also to the applicant. It is mentioned at item No.1 below notification that a copy forwarded to the Chief Secretary, Govt. of Gujarat, Sachivalaya, Gandhinagar with reference to the D.O.No.AIS-3583-41-6980-G, dated 27.6.1984. Thus, as per this Notification dated 24.7.1984, the applicant was relieved from his service

with immediate effect as the President was pleased to accept his resignation.

22. The applicant has submitted that the letters addressed by him from 10.1.1984 to 11.7.1984 to the Govt. of India were not the letters of resignation but were representations. He submitted that due to malafide acts of respondents, he was not promoted on 6.3.1981 though his juniors were promoted and acceptance of the so called resignation by the President amounts to wrongful dismissal of the applicant. He has relied on the decision in Abraham Reuben vs. Karachi Municipality decided by Additional Judicial Commissioner reported in AIR 1929 Sind page 69 in support of his submission. The applicant has submitted that Union of India has deliberately over looked the submissions of the applicant in the letter dated 12.6.1984 and according to the applicant his rights to public employment were violated and was forced to be without income, hence it was actually a case of violation of right to life as guaranteed under Article 21 of the Constitution of India. He submitted that on one hand the Govt. was not deciding the case of the applicant and on the other, it was not extending his leave though there was leave to his credit, and indirectly forcing the applicant to accept a lower post though the applicant was entitled for a higher post. The applicant submitted that the authority could not act in this manner and the same would be violative of Article 14 and 16 of the Constitution of India and if through such violation, the means of livelihood are snapped, it would amount to violation of right to life as guaranteed under Article 21 of the Constitution of India. He submitted that as per the contention of the respondent No.1 in the reply the letter dated 10.1.1984 was conditional and the letter dated 11.7.1984 from the applicant cleared the doubt and in view of the said letter, the resignation of the applicant was accepted. The applicant submitted that the respondent No.1 has preferred to pick and choose only few

us

lines from the letter dated 11.7.1984. He submitted that the cardinal principle of interpretation of the document is that the document should be read as a whole and if the transaction covers a number of correspondence the same should be read together to gather the true tenor and meaning. He submitted that though the Union of India has in the reply relied on the letter of the applicant dated 11.7.1984 it has ignored the opening para of the letter. He submitted that page 190 of the reply of the Respondent No.1 makes it clear that the letter dated 11.7.1984 was received in the Ministry on 16.7.1984 and after 17.7.1984 the same has not proceeded beyond the table of the Under Secretary. He submitted that the Notification does not refer to the letter dated 11.7.1984 and the Govt. of Gujarat has not clarified as to when the letter dated 11.7.1984 was forwarded by them to the Union of India. He submitted that the Notification dated 24.7.1984 is not issued by the order and in the name of the President of India and it is in violation of Article 77 of the Constitution of India. In our opinion, this submission of applicant has no substance because according to the Article 77 of the Constitution of India, all executive action of the Govt. of India shall be expressed to be taken in the name of the President and orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President, and the validity of an 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. The Notification dated 24.7.1984 is published by the Under Secretary, Govt. of India to the effect that the President was pleased to accept the resignation. Therefore, this Notification is only the conveyance of what the President has done with regard to the applicant's



resignation. In our opinion, there is no illegality in such notification conveying the order of the President and therefore, the objection raised by the applicant is rejected.

23. The applicant submitted that he has not given voluntary resignation at any time. According to him, it was only after the decision of the Hon'ble Supreme Court of India in Civil Appeal Nos. 2796 and 2797 of 1985 that he could challenge the action of the State Govt. in not promoting him at the right time which amounted to wrongful dismissal on 6.3.1981 because on that day there was no letter of resignation by him. He submitted that his suitability of promotion was decided by Hon'ble Supreme Court on 14.3.1986 when the appeals filed by respondent No. 2 were dismissed and till that day everything was in fluid condition. He submitted that on 9.4.1986 vide his letter at Annexure 'M' to the Secretary, Department of Personnel and Administrative Reforms, Govt. of India and to the Chief Secretary to the Govt. of Gujarat, he intimated that he did not resign voluntarily and he requested them that to accept his request for retirement from IAS w.e.f. 1st August, 1986 and the Govt. was at liberty to give him a posting and he was obliged to serve till 31st July, 1986. The Govt. of India wrote a letter dated 6th August, 1986 Annexure 'N' to the Chief Secretary, Govt. of Gujarat that the applicant had represented in his letter dated 9.4.1986 (Annexure 'M') that on the basis of the Hon'ble Supreme Court's judgment, his resignation should be considered as non-est and he should be treated to be in service and he should be given the benefits of the service till he actually retired from IAS legally. The Govt. of India has referred to the letters dated 12.6.84, 11.7.84, 14.7.84 of applicant and also the points raised by him and after taking into consideration all points raised by applicant the representations were not accepted and the decision

5

earlier taken to accept the resignation w.e.f. 24.7.1984 was not modified. The applicant again wrote letter Annexure 'O' dated 18th August, 1986 to the Secretary to Government of India, Deptt. of Personnel and Administrative Reforms stating therein that his resignation was not the subject at issue in the matter before the High Court or before the Hon'ble Supreme Court and that he had filed writ petition to prove that he was entitled to promotion and he was denied the same. This letter was a notice under Section 80 of the Court of Civil Procedure. The Govt. of India gave reply dated 24.11.1986 produced at Annexure 'P' to the applicant that his representations dated 18th August, 1986 were considered carefully by the department and it was not possible to accept his request.

24. The applicant has submitted that the Govt. of India acted arbitrarily in accepting the resignation of the applicant that applicant had asked for promotion etc. in his letters and the Govt. of India had all power to review the decisions of the Govt. of Gujarat about non-suitability of applicant for promotion before accepting resignation. He submitted that according to Rule 16 of All India Service Discipline and Appeal Rules, 1969, the Union of India had a power to review the decision of the State Govt. about non-suitability of applicant for promotion but that was not done which amounted to the violation of Articles 14 and 16 of the Constitution of India. He submitted that the case of the applicant is that the Govt. of India has not impartially examined the letter of the applicant about resignation. He submitted that none of the letters of the applicant addressed to the Govt. of India was a voluntary resignation in eye of law but it was an act out of frustration which means compulsion or forced by circumstances, etc. He submitted that action of the respondents was malafide exercise of power and the Notification dated 24.7.1984 by which the resignation was

an

accepted was void decision. He submitted that it was not necessary for him to establish any prejudice because according to him there was a violation of fundamental right which itself renders the impugned action of the respondents void. He submitted that he has specifically mentioned in para 5(A) and para 6(L) of his application that all along he requested Govt. of India to promote him to the super time scale and if that scale had been granted in time he would not have resigned. He, submitted, that he has given the details of the malafides in his application and the High Court and the Hon'ble Supreme Court have also examined the same. The High Court of Gujarat has held that the applicant came to be wronged at various stages resulting in his final decision to quit his coveted post of IAS and that it was really unfortunate that such a thing would have happened with the Govt. of Gujarat which otherwise has earned encomiums at the national level. He also referred the observation of the Hon'ble Supreme Court of India in the judgment given in the appeals filed by the Govt. of Gujarat to the effect that the respondent, ^{i.e. present applicant} apparently in sheer frustration resigned from service.

25. The applicant referred to various proceedings of the Selection Committee for promotion to senior scale of IAS Officers dated 21st August, 1986, 6th March, 1981, 28th July, 1981 and 29th December, 1981. He submitted that thereafter the Selection Committee did not meet till 4th May, 1983. He has referred to the proceedings of the Selection Committee Meeting dated 4th May, 1983. He submitted that in all these proceedings, whatever notings were made against the applicant were out of the malafides against applicant. He submitted that the High Court of Gujarat also in its judgment has observed that all the

52

time, the Selection Committee has marred the chances of the applicant any how. He submitted that if there is calculated attempt of the respondents to compel the applicant to serve on lower post on the alleged ground of non-suitability and compelling the applicant to voluntary retire, it would be an act of malafides on the part of the respondents. He submitted that it was on the last day that the respondents considered the case of the applicant as per the direction of the High Court of Gujarat. He submitted that the batch of applicant was considered for promotion on 4.5.1983 while in the case of the applicant, additional criteria was added for consideration. He submitted that the High Court has considered all these aspects in the judgment. He has also referred from the record his C.R dated 1st November, 1983 to 29th February, 1984. He submitted that the applicant was instrumental for preparation of 25 Housing Schmees for 45000 houses. He submitted that Chief Secretary's comment on him was not proper about Vigilance Commission, etc. He submitted that it is the result of the malafide actions on the part of the respondents that compelled him to resign. He submitted that the respondents cannot take advantage of their own wrong. He submitted that at the earliest when the applicant put resignation, respondent No.1 ought to have examined whether decision of the Govt. of Gujarat in not promoting applicant was legal and proper. He submitted that he could agitate his fundamental right.

26. The applicant has relied on the decision in P.K.Ramachandra Iyer vs. Union of India 1984 SCC (L & S) p.214. In this decision, the Hon'ble Supreme Court has considered the circumstances under which the resignation would become unethical and illegal and when it would amount to removal from service. He has also relied on the decision

53

in Delhi Electricity Supply Undertaking vs. Tara Chand 1978 (2) SLR p.425. It is held in his decision that the document should be read as a whole to find out its true meaning. Then he referred to the decision in E.P.Royappa vs. State of Tamil Nadu and other 1974 S.C. page 555 where the Hon'ble Supreme Court has considered Articles 311, 14 and 16 of the Constitution of India. The applicant then relied on the decision in A.R.Antulay vs. R.S.Nayak AIR 1988 S.C. p.1531, in support of his submission that no prejudice need be proved for fundamental right and that the violation of fundamental right itself renders the impugned action void.

27. The applicant submitted that by June/July 1984, the authorities had endeavoured to violate his right to life by snapping the means of livelihood which amounted to violating his right to life as guaranteed under Article 21 of the Constitution of India. He submitted that in this regard, the life would not only mean the animal life, but all those final aspects that would make life liveable, which would also include the reputation and self-respect of the applicant and the Union of India remained a silent spectator, and therefore, he had to resign which should not be considered as voluntary. He submitted that the authorities could not treat the applicant to have waived his fundamental right while resigning. In support of his above submission, he has relied on the decisions in Board of Trustees of Bombay vs. Dilipkumar AIR 1983 SC p.109 relevant observation at page. 114, Basheshar Nath vs. Income Tax Commissioner AIR 1959 S.C.C. page 149, Karaksingh vs. State of Uttar Pradesh AIR 1963 S.C. page 1295, Olga Tellis vs. Bombay Municipal Corporation AIR 1986 S.C. page 180 and relevant observation at page 193. The

applicant submitted that having regard to all his submissions, the application be allowed and the reliefs prayed by him against respondents be granted. He submitted that interest on pension and gratuity was not claimed when O.A. was filed but since much time has elapsed, he would be entitled to the interest in view of the General Saving Relief Clause. He submitted that his resignation should be treated as nonest and the applicant be treated to have continued in IAS till 31st July, 1986 and he should be given his retiral benefits as would be available to a Member of the Indian Administrative Service retiring after 20 years of service etc.

28. Learned advocate Mr. Jayant Patel for the Union of India i.e. Respondent No.1 in the reply to the arguments of the applicant took us through the application of applicant and submitted that the applicant alleged therein that he had filed Special Civil Application No.1773/84 for promotion to the super time scale and that the High Court of Gujarat and the Hon'ble Supreme Court of India came to the conclusion that action on the part of the Selection Committee superseding the applicant was not proper and that the applicant was wrongly passed over for promotion to the selection grade as well as for promotion to the super time scale. He submitted that the grievance of the applicant before the High Court of Gujarat and the Hon'ble Supreme Court of India was about the non promotion of the applicant. He submitted that in representations - letters dated 10.1.1984, 22.2.1984, 28.2.1984, 2.3.1984, the applicant had put certain conditions to the Govt. for treating the same as letter of resignation though the applicant in all these letters had disclosed his mind that he should be allowed to retire from IAS. The learned advocate for respondent No.1 submitted that in letter dated 23.6.1984, ^{respondent No.1} expressed doubt that the letters of resignation submitted by the applicant were conditional

and hence requested the respondent No.2 that if the applicant wanted to resign from the service, an unconditional letter of resignation should be submitted. The subsequent letter dated 12.6.1984 of applicant Annexure 'J', according to the learned advocate for respondent No.1, was clear voluntary resignation in which the applicant had clearly stated that he could not be forced to serve if he did not want to serve and that his resignation should be accepted and he should be relieved from IAS on or before 28.6.1984 and that he wanted to join the Bar enrolling himself as an advocate and could not apply for the same without a certificate of relief from IAS. and that his decision to quit IAS was final. He, submitted that these were the new grounds added in this letter which clearly showed that his resignation was voluntary. He submitted that what more would be required to show the clear mind of the applicant that he wanted to quit the IAS by this voluntary resignation. He submitted that the applicant also wrote in that letter that any delay to relieve him from IAS would result in preventing him from accepting any other profession and the Respondent No.1 would be liable to pay damages for causing injury to his income. He submitted that thereafter the applicant wrote another letter Annexure 'K' dated 11.7.1984 in which he has mentioned that his filing of Special Civil Application No.3452/84 before the High Court of Gujarat should not be construed to mean that he wanted to continue in IAS and he wanted to quit IAS. He has mentioned further in that letter that the Govt. of India were duty bound to relieve him from service when he did not want to serve and he had finally mentioned in that letter that his resignation should be accepted immediately and he should be relieved from IAS forthwith and he should be granted suitable compensation or salary from 28.6.1984 till the date of relief from IAS and in no case the date of relief be

30

extended beyond 28.7.1984 and he warned the respondents that if he was forced to be without alternative employment and income beyond 28.7.1984, he would seek appropriate relief which would include compensation or loss of income etc. He, therefore, submitted that by the letter dated 11.7.1984 he made doubly sure of his final intention that he wanted to quit the post of IAS and the respondent No.1 was bound to relieve him and that in case he is forced to be without alternative employment and income beyond 28.7.1984 he would seek appropriate relief which would include compensation for loss of income. He submitted that there were the new grounds mentioned in this letter which were not made in previous letters and hence those grounds lead the respondent No.1 to accept the resignation of the applicant which was voluntary resignation and the President of India accepted the resignation of the applicant with immediate effect from 24.7.1984. He submitted that the applicant was given the selection grade w.e.f. 6.3.1984 and super time scale w.e.f. 1.11.1983 as per the direction of the Hon'ble Supreme Court of India. He submitted that even in the judgment of the High Court of Gujarat which was delivered after the resignation of the applicant was accepted, it is observed that the question of super time scale has certainly become accademic, but as far as the monetary benefits are concerned, the applicant can insist upon if he succeeds in getting that super time scale and even reading the judgment of the Hon'ble Supreme Court of India it appears that as resignation was accepted, the applicant was only entitled to the consequential monetary benefits due to his promotion of selection grade w.e.f. 6.3.1981 and to the super time scale w.e.f. 1st November, 1983. He submitted that if the applicant had in his mind the idea that his resignation was not a voluntary resignation, he would have certainly raised the plea at that time that the direction be given to the respondents to take him back in service treating his resignation as non-est, but he has not even taken that plea

S?

before the Hon'ble Supreme Court of India. He, therefore, submitted that right from 10.1.1984 the applicant wanted to resign from his post but till the letter dated 12.6.1984, his previous letters contained some conditions and therefore, the respondent No.1 did not accept that resignation and wanted clear voluntary resignation from the applicant if he so desired and the applicant submitted voluntary resignation on 12.6.1984 followed by another letter dated 11.7.1984 which was accepted by the President of India. Therefore, all these events categorically, clearly and unequivocally show that the applicant had no intention to continue in service but he wanted to resign and now the applicant wants to turn round saying that the resignation given by him was not voluntary resignation. The learned advocate for the respondent No.1 submitted that after the resignation, the applicant had joined the Bar and he has been practising since then and the present application made by him has no substance.

29. Learned advocate for the respondent No.1 submitted that when the employee - applicant in his letter dated 12.6.1984 and 11.7.1984 expressed that his filing of Civil Application in the High Court of Gujarat should not be construed to mean that he wanted to continue in service and also gave threat to respondent No.1 that if the prompt action was not taken and if there was loss of income to him, he would proceed to take action for his monetary loss, nothing more was necessary to show his clear mind that he did not want to continue in service and that his decision to resign was final. He submitted that the applicant had not stated in those letters that in the event of his success in the High Court of Gujarat he would continue in service. He, therefore, submitted that all these circumstances compelled the respondents to act on the basis that the applicant had voluntarily resigned from his

gl

service and the respondent No. 1 in reasonable exercise of its power accepted the resignation of the applicant and once it is accepted, it is not open to the applicant to say that his resignation was not voluntary.

30. Learned advocate for respondent No. 1 submitted that the applicant having after thought after about 20 months after his resignation was accepted wrote a letter on 9.4.1986 Annexure 'M' to the respondents that his resignation from service was not voluntary and that it was forced upon him and the same should be considered non-est. He submitted that the respondent No.1 carefully considered all these representations in details and the representations were rejected as found from the letter Annexure 'N' dated 6th August, 1986 written to the Chief Secretary, Govt. of Gujarat by the respondent No.1. He submitted that thereafter the applicant again represented by the letter dated 18th August, 1986 Annexure 'O' that his previous letters were an outcome of violation of fundamental right and they could not be treated in isolation of his original letter dated 10.1.1984 but the same were after consideration rejected as per the letter Annexure 'P' dated 24th November, 1986.

31. Learned advocate for respondent No.1 submitted that there were no acts of malafides against the applicant in not promoting him to the selection grade or super time scale nor the respondent No.1 has practised fraud on the applicant. He submitted that the acceptance of resignation given by the applicant does not amount to dismissal from employment as urged by the applicant. He submitted that there are no statutory rules regarding acceptance of resignation of IAS Officer. He submitted that now the applicant has no legal right to challenge acceptance of resignation by President of India. The learned advocate relied on the decision in Rajkumar vs. Union of India AIR 1969 S.C. p.180 in support

ren

59

of his submission that the employee, after having offered resignation and after it was accepted, had no locus paenitentiae to withdraw it. This judgment was delivered by a Bench of three Hon'ble judges of Supreme Court. In the case before the Hon'ble Supreme Court, the appellant belonged to the IAS and was in August, 1964 posted as Collector and District Magistrate, Kota. On August 21, 1964, he addressed a letter to the Chief Minister, Rajasthan, setting out several grievances and finally stated "In conclusion I would only request that the Government may do the kindness of accepting my resignation from the service which I am submitting separately as I am convinced that it would be impossible to continue in such atmosphere without being humiliated from time to time". He had also addressed a letter on 30th August, 1964 to the Chief Secretary to the Govt. of Rajasthan submitting his resignation from the IAS for early acceptance and requested that it might be forwarded to the Government of India with remarks of the State Govt. After some time, the appellant changed his mind and by letter dated 27th November, 1964, he requested the Chief Secretary to the Govt. of Rajasthan to recommend acceptance of the withdrawal of his resignation from the IAS and also addressed a separate letter to the Secretary to the Govt. of India, Ministry of Home Affairs intimating that he was withdrawing his resignation from the IAS. On March 29, 1965, an order accepting the resignation of the applicant from the IAS was issued and the appellant was directed to hand over the charge to the Additional Collector, Kota. The appellant then moved a petition in the High Court for the issue of a writ of certiorari calling for the record of the case and quashing the order passed by the Government of India accepting the resignation of the appellant. The High Court rejected the petition holding that the resignation became effective from the date on which it was accepted by the

Govt. of India, and a subsequent withdrawal of the resignation was ineffective, even if acceptance of the resignation was not intimated to the appellant. He, thereafter preferred an appeal to the Hon'ble Supreme Court of India. It was held by the Hon'ble Supreme Court of India that "Termination of employment by order passed by the Govt. does not become effective until the order is intimated to the employee. But where a public servant has invited by his letter of resignation determination of his employment, his services normally stand terminated from the date on which the letter of resignation is accepted by the appropriate authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the public servant to withdraw his resignation after it is accepted by the appropriate authority. Till the resignation is accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned has locus paenitentiae but not thereafter". The appellant had also taken alternative ground before the Hon'ble Supreme Court that acceptance of his resignation amounted to dismissal from employment and failure to comply with the requirements of Article 311 of the Constitution vitiated the order accepting the resignation but the same was rejected. It was held that the order complained of did not purport to be one of dismissal: the Govt. of India accepted the resignation submitted by the appellant, they did not purport to terminate the appointment for any misconduct on the part of the appellant or as a measure of penalty. The learned advocate for the Respondent No.1 submitted that this decision clearly shows that the IAS officer who had resigned had no locus paenitentiae to withdraw ~~his~~ offer of his resignation after it was accepted and it also shows that

61

the acceptance of such resignation did not amount to dismissal from employment because acceptance of resignation in such case did not purport to terminate the appointment for any misconduct on the part of the employee or as a measure of penalty. He submitted that ratio of this judgment fully applies to the facts of the present case and the applicant, in view of this decision, has no valid ground to urge that his resignation has become non-est or that the acceptance of his resignation amounted to dismissal from employment. We agree with the learned advocate for the respondent No.1 that this judgment of Hon'ble Supreme Court is complete answer to negative the applicant's prayers made in this application. He also submitted that this is the decision of the three Hon'ble judges of the Supreme Court while the decision relied on by the applicant in P.K.Ramchandra Iyer AIR 1984 S.C.C. (L & S) 214 was the decision given by the two Hon'ble Judges of the Supreme Court and therefore the decision in Rajkumar's case (supra) AIR 1969 S.C. 180 being of a larger Bench should be followed. He also submitted that this decision of Rajkumar's case was not referred to in P.K.Ramchandra Iyer's case. Moreover P.K.Ramchandra Iyer's case does not help the applicant because in that case the aggrieved party Dr.Gupta had resigned from the membership of the faculty in protest against a treatment and against the discrimination and victimisation shown to him by the Head of the Division and when that letter was placed before the meeting of the Academic Council, it resolved that Dr.Gupta was not interested in continuing Faculty Member and hence the council regretted to utilise the services as a Faculty Member of the P.G.School any more. It was in the light of these facts that the Hon'ble Supreme Court had held that the callous and heartless attitude of the Academic Council was shocking and it added insult to injury and that the Council had seized upon this opportunity to get rid of Dr.Gupta. We agree with the submissions of the learned advocate for respondent No.1 that the decision in

62

P.K.Ramchandra Iyer's case was on different facts than the one in Rajkumar's case and present case and therefore, that decision does not help the applicant. The applicant submitted that it is observed in H.Harcharan Singh vs. Sajjan Singh AIR 1985 S.C. 236 that the Court sits in the Divisions of two and three Judges for the sake of convenience and it may be in appropriate for a Division Bench of three Judges to purport to over rule the decision of a Division Bench of two judges. He, therefore, submitted that the decision in P.K.Ramchandra Iyer's case should be followed. We do not desire to embark upon this question in this case any further but as observed above the ratio laid down in P.K.Ramchandra Iyer's case does not help the applicant while the ratio of Rajkumar applies to the facts of the present case and relying on it, we hold that the applicant was not entitled to agitate that his resignation has become non-est or that the acceptance of his resignation amounted to dismissal from employment.

32. The learned advocate for the respondent No.1 submitted that regarding question of waiver of fundamental right, it cannot be disputed that a fundamental right cannot be waived, but in the instant case, there was no arbitrary exercise of powers by respondent No.1 and the respondent No.1 had never practised fraud on the applicant nor shown any malafides to the applicant. He submitted that the applicant had been making the representation from time to time and had also gone to the Court number of occasions on a number of issues like inter cadre transfer, promotion, expunction of adverse remarks in confidential reports, etc. and thereafter, he made a comprehensive representation dated 10.1.1984. He submitted that he had put conditions in the representations/letters prior to 12.6.1984 but the

re

63

letter dated 12.6.1984 was his voluntary resignation, where he had unequivocally expressed himself that his decision to quit was ~~final~~ ^{final} and he could not be forced to serve if he did not want to serve and that he should be relieved from IAS on or before 20.6.1984, which letter was followed ~~up~~ by letter of resignation dated 11.7.1984 in which he mentioned that his filing the Special Civil Application should not be construed to mean that he wanted to continue in IAS and he did not want to serve any longer and the decision to quit was final. Now if we examine the letters dated 10.1.1984, 22.2.1984, 28.2.1984, 2.3.1984 they were the letters containing representations and further giving alternatives to the respondents before treating his letters as resignations but in the subsequent letter of resignation dated 12.6.1984 the applicant took the new pleas that (i) as per Fundamental rights guaranteed under Articles 14, 16 and 21 of the Constitution of India he could not be forced to serve if he did not want to serve (ii) his resignation should be accepted and he should be relieved from IAS on or before 28.6.1984 (iii) he wanted to join the Bar enrolling himself as an Advocate and could not apply for the same without a certificate of relief from IAS, (iv) any delay to relieve him from IAS would result in preventing him from accepting any other profession and Govt. of India would be liable to pay damages for causing injury to his income, (v) if he was not relieved from IAS, he would be constrained to approach appropriate Court to enforce his Fundamental rights. This letter was followed by his another letter dated 11.7.1984 in which he took new pleas that (i) his filing of the Special Leave Petition should not be construed to mean that he wanted to continue in IAS, (ii) the Govt. of India was duty bound to relieve him from service when he did not want to serve, (iii) his resignation should be accepted immediately and

he should be relieved from IAS forthwith, (iv) if he was forced to be without alternative employment and income beyond 28.7.1984, he would seek appropriate relief which would include compensation for loss of income by approaching appropriate High Court or Supreme Court of India. The above were the new pleas taken in the letters of resignation dated 12.6.1984 and 11.7.1984 which were not taken in earlier letters. Therefore, the respondent No.1 was duty bound to take the same into consideration. Having so taken them into consideration, and having decided that the applicant's resignation, in view of these pleas, should be accepted and having issued the order accordingly, the question now before us is whether the respondent No.1's this decision suffered from lack of impartiality as alleged. In this connection applicant's allegation is that the respondent No.1 was influenced by contents of D.O.No.AIS-3583-41-6980-G, dated 27.6.1984 addressed by respondent No.2 to respondent No.1 as referred to in item No.(1) below the notification dated 24.7.1984 which will amount to colourable exercise of powers by respondent No.1. We have perused carefully the contents of letter dated 27.6.1984 and we find that the contents are only reference to the letter dated 12.6.1984 of applicant and his previous representation. Reading this letter, we do not agree with the submission of applicant that his letter was the basis of the decision taken by respondent No.1 and we also do not agree with him that the respondent No.1 did not

act impartially in examining his letter of resignation dated 28.6.1984 or 11.7.1984 or that it was colourable exercise of power by respondent No.1 . The respondent No.1 was no subordinate authority to respondent No.2 as so as to be influenced as alleged to the extent of losing sense of impartiality and independently examining contents of applicant's resignation letters above. When such a letter is written to a subordinate authority, there may be some ground to suspect whether the subordinate authority was not swayed away in regard to its judgment, but that is not the case here. At the cost of repetition of our earlier view, we should say here that the applicant had made himself clear that he did not want to wait for the outcome of the writ petition filed by him so far the acceptance of resignation is concerned. Hence when the judgment came in his favour, he cannot fairly argue that the judgment gave him cause of action in this application. The judgment of High Court or Hon'ble Supreme Court gave no such cause of action. We reject his contention on this point. The contents of these two letters ^{of} resignation are such that they convey the clear mind of the applicant that under no circumstances he wanted to continue and therefore it is not possible to accept the submission

res

of applicant that these two letters did not indicate his intention of voluntary resignation or that the said two letters were the result of the actions of malafides or fraud practised on the applicant by respondents. Learned advocate for respondent No.1 submitted that the grievances of the applicant are discussed in the judgments of the High Court of Gujarat in Special Civil Application filed by applicant and Hon'ble Supreme Court in appeals also. He submitted that reading the judgment of the High Court of Gujarat, it is clear that the applicant having resigned and his resignation having been accepted, the question of the super time scale to be given to him had partly become academic but so far the monetary benefits were concerned, it was not a dead matter. He submitted that reading the decision of the Hon'ble Supreme Court of India, it is found that the Hon'ble Supreme Court was of the opinion that there was no reason to doubt the bonafides of Shri H.K.L. Capoor, the Ex-Chief Secretary of respondent submitted No.2. He, therefore, that it cannot be held that the resignation given by the applicant was a result of the act of malafides against him or an act of fraud against him by respondent No.1. He submitted that therefore, all the judgments relied on by the applicant will not apply to the present case in view of all these facts and events.

28. We proceed now to discuss judgments cited by applicant. The first decision relied on by the applicant was Abraham Reuben vs. Karachi Municipality AIR 1929 Sind p.69. It was a decision given by the Additional Judicial Commissioner in the Civil Suit. The issues among others were whether the plaintiff in that case was wrongfully and illegally dismissed from service as alleged by him. After oral and documentary evidence led in the case, it was held that the plaintiff had been dismissed from the service of

67

the Karachi Municipality by virtue of powers vested in the Municipality. This case was decided on the facts and circumstances confined to that case and references to some English decisions were made also. It was held that if a servant's intention was not to be bound by contract, resignation was voluntary but if employer's conduct amounted to refusal to continue the servant, resignation was compulsory. The facts of the said case do not apply at all to the facts of the present case. The second decision in Delhi Electricity Supply Undertaking vs. Tara Chand 1978 (2) SLR 425 also does not help the applicant because in the said matter, the employee in his letter of resignation mentioned that he was in bad health and on sick leave and was compelled by his superiors to write the letter and the final sentence of the letter that he resigned from the service was followed by the words "compelled by the officer". It was, therefore, held that the use of inverted coma in the last sentence should also be attached its due significance as incorporating an alleged demand by his superiors that he should resign. In the case of the applicant, we find that he had shown a ^{complete} and clear intention to resign from the IAS without any reservation or protest or compulsion by superior and there was no arbitrary action on the part of the respondent No.1 in accepting the resignation of the applicant. The next decision relied upon by the applicant was E.P.Royappa vs. State of Tamil Nadu AIR 1974 S.C. 555 and he invited our attention to the observation of the Hon'ble Supreme Court of India at page 583 in which the question of violation of Article 14 and 16 of the Constitution of India was considered. It is observed in this decision that where an act is arbitrary, it is implicit in it

68

that it is unequal both according to political logic and constitutional law. It is also observed further that Article 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. We respectfully agree with the ratio of this decision but we do not agree with the submission of the applicant that the respondent No.1 had not impartially examined his letter of resignation and we ^{do} not agree with him that his resignation was not voluntary in eye of law. We do not agree with him that the action of the respondent No.1 in accepting the resignation was void or voidable, the reason being his clear intention to quit the IAS as final and as per his say in the letters that he could not be forced to serve if he did not want to serve and that he wanted to join the Bar as an advocate. Therefore, the above decision will not help the applicant. The next decision relied on by the applicant was A.R.Antulay v. R.S.Nayak AIR 1988 S.C. 1531 in which it was held that no prejudice need be proved for fundamental right and the violation of fundamental right itself renders the impugned action void. In this case, we are not satisfied that the fundamental right of the applicant has been violated. On the contrary, it is clear from the contents of the applicant's letter dated 12.6.84 and 11.7.84 that he wanted to enforce his fundamental right to alternative employment of his choice namely legal practice, which the Govt. of India could prevent only at its own cost and consequences. The next decision relied on by the applicant was Kharak Singh v. State of U.P. AIR 1963 SC 1305. The applicant invited our attention to the observation of Hon'ble Supreme Court at page 1305 in which it was observed that the expression "coercion" in the modern age cannot be construed in a narrow sense and that the scientific methods used to condition a man's mind are in a real sense physical restraints, for they engender physical fear channeling one's actions through anticipated and expected grooves.

68

It is further observed that the right to personal liberty takes in not a right to be free from restrictions placed on his movement but also free from encroachments on his private life. In our opinion, this decision does not help the applicant because the applicant wanted to join the Bar as an advocate and he had no intention to serve in IAS any more and hence his resignation was accepted. The next decision relied on by the applicant was Board of Trustees Port of Bombay v. Dilipkumar AIR 1983 S.C. 109. He invited our attention to the observation of the Hon'ble Supreme Court at page 114 of this decision. The Hon'ble Supreme Court while referring to article 21 of the Constitution of India observed that the expression 'life' does not merely connote animal existence or a continued drudgery through 'life' but it has a wider meaning and where therefore the outcome of a departmental inquiry was likely to adversely affect reputation or livelihood of a person some of the finer graces of human civilization which make life worth living would be jeopardised and the same could be put in jeopardy only ^{by} law which inheres fair procedures. In the case before us, we are not satisfied that the action taken by the respondent No. 1 in accepting the resignation of the applicant had been the result of any alleged malafides towards the applicant. The next decision relied on by the applicant was Basheshar Nath v. Commissioner of Income Tax AIR 1959 S.C. 149 which was referred to in the latter decision also in Olga Tellis v. Bombay Municipal Corporation AIR 1986 S.C. 180. The applicant invited our attention to para 32, 40 and 41 of this judgment in which Article 21 of the Constitution of India is considered. It is observed in this decision that any person who is deprived of his right to livelihood, except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred by Article 21. It was observed that just as a malafide act has no existence in the eye of law even so, unreasonableness vitiates law and procedure alike. These decisions do not apply to the case of the applicant because we are not satisfied that his resignation was the result of

90

any alleged malafides or arbitrariness or any compulsion on him which can be said to have deprived him of his fundamental right.

29. Mr. Sandip Shah, learned advocate appearing for Respondent No.2 has adopted the arguments advanced by the learned advocate for respondent No.1. He submitted that after the decision of the Hon'ble Supreme Court, the respondent No.2 has granted all the benefits admissible to the applicant as per the judgment of the Hon'ble Supreme Court and he invited our attention to the said contentions taken by the respondent No.2 at page 206 of the reply in which the respondent No.2 has stated that the State Govt. has granted the applicant selection grade w.e.f. 6.3.1981 and super time scale w.e.f. 1.11.1983 with all consequential benefits including arrears of pay and allowances as well as costs of the petition. He, therefore, submitted that now the applicant has no right to make any grievance after having received all these benefits and he could not be heard to say that his resignation has become nonest. He submitted that the applicant had not completed 20 years of service and therefore, he is not entitled to benefits on that ground of voluntary retirement. He submitted that all reliefs of the applicant have been exhausted by the judgment of the Hon'ble Supreme Court and satisfied and the applicant wants to take a chance to extract more money now by second round of litigation which he is not entitled under law. He submitted that the applicant has nowhere in the application urged that his resignation was not properly and validly accepted by the respondent No.1 and he cannot agitate this question also.

30. In the instant case, we are satisfied that the resignation tendered by applicant was voluntary and unconditional and respondent No.1 has validly and legally accepted

91
the resignation of the applicant. The applicant has received all the monetary benefits in pursuance of the judgment of the Hon'ble Supreme Court of India. In the instant case, we are not satisfied that the applicant has any legal ground to challenge validity of the acceptance of resignation by respondent No.1. We also decide that the applicant has failed to establish that his resignation should be considered as non-est. In this view of the matter, the subsequent prayer of the applicant that he should be deemed to have continued in IAS till 31st July, 1986 and that the respondent No.2 to grant him the retiral benefits on the basis of voluntary retirement do not arise. In view of the above findings, the applicant is not entitled to any relief claimed.

31. The learned advocates for the respondents also submitted that the present application is barred by principles of resjudicata under Section 11 of the Civil Procedure Code. It is submitted that the applicant should have taken all the pleas taken in this application before the High Court of Gujarat, Ahmedabad in the Special Civil Applications filed by him but the applicant having not included these pleas in his Special Civil Applications and hence this application is barred by Principle of Constructive Resjudicata. We are not satisfied that this application is barred by principle of Constructive Resjudicata under Section 11 of the Civil Procedure Code. In the instant case before us, the issue is whether the resignation of the applicant should be treated as non-est which could not have been the issue directly and substantially before the High Court of Gujarat in the writ petitions filed by the applicant and this application is not barred by principles of Constructive Resjudicata. We have thus considered and decided all the points urged before us as above. No other point was urged before us.

O.A./50/87

111/3
B

Goram : Hon'ble Mr P H Trivedi .. Vice Chairman
Hon'ble Mr P M Joshi .. Judicial Member

31/3/1987

Applicant not present. Mr Anil Dave for respondent No. 2 files Vakalatnama may be taken on record. Mr PN Ajmera for Mr JD Ajmera for respondent Union of India requests for time. Allowed. The case to be put up for admission on 4-5-87. Applicant to be informed of the date of admission.

(P H Trivedi)
Vice Chairman

(P M Joshi)
Judicial Member