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CENTRAL ADMINISTRATIVE TRIBUNAL
Jodhpur Bench; Jodhpur.

Original Application No. 296/2005

Date of Decision: 3rd August 2006

Hon'ble Mr. J K Kaushik, Judicial Member.

S.L. Bansal, S/o late Sh Bankat Lal Ji Bansal, aged about 53 years, r/o A-190 Shastri Nagar, Jodhpur (Rajasthan). Ex.Assistant Commissioner, Custom and Central Excise (ICD) Ballabgarh, Distt. Faridabad, Haryana (under transfer order to Central Excise Commissionerate, Ranchi, Jharkhand).

: Applicant.

Rep. by Mr. S.K. Malik & Mr. Dayaram: Counsel for the Applicant.

VERSUS

1. Union of India through the Secretary Government of India, Ministry of Finance, Department of Revenue (AD-V Section), North Block, New Delhi. 110 001.
2. The Chairman, Central Board of Excise and Customs, Ministry of Finance, Department of Revenue, North Block, New Delhi. 110 001.
3. The Deputy Secretary to the Government of India, Ministry of Finance, Department of Revenue (AD-V Section), North Block, New Delhi. 110 001.

: Respondents.

Rep. by Mr. Kuldeep Mathur: Counsel for the respondents.

ORDER

Mr. J K Kaushik, Judicial Member.

Shri S.L. Bansal has filed this O.A under Sec. 19 of the Administrative Tribunals Act, 1985 for seeking a mandate to the respondents to release his pension and other retiral benefits due to him with effect from 15.11.2004 along with interest at the rate of 12% per annum and also to impose exemplary costs on the respondents for causing undue harassment.



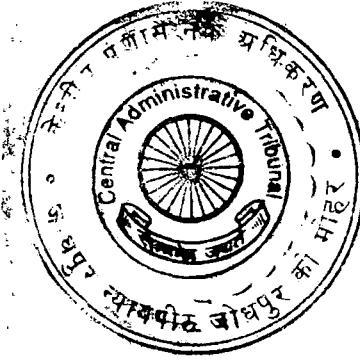
2. With the consent of learned counsel for the contesting parties, the case was taken up for final hearing at the stage of admission. I have accordingly heard the elaborate arguments advanced at the bar by the learned counsel for both the parties and earnestly considered the pleadings and records of this case.

3. The abridged facts as delineated from the pleadings of both parties depict that the applicant while holding the post of Assistant Commissioner Group 'A' in ACTL, Ballabgarh at Faridabad came under cloud in as much as the Directorate of Revenue Intelligence, Delhi Zonal Unit, New Delhi, detected an export fraud case by the Firm controlled by Shri Vinod Garg and his brother N.D. Garg, having implications of over Rs. 20 crores. The competent authority considered it expedient to transfer him from the office of ACTL, Ballabgarh to the Office of Commissioner, Central Excise and Customs at Ranchi on 29.08.2003. He did not carry out the transfer order and applied for earned leave upto 27.10.2003. He again applied for leave on the ground of his domestic problems and covered the period upto 05.03.2004. On 05.03.2004 he was placed under suspension and his headquarters during the suspension period was fixed at Ranchi with the usual condition that he will not leave the headquarters without prior permission from the competent authority. The same was served to him on 26.05.2004 at Kota (Rajasthan). The suspension period was extended from time to time. The CBI lodged FIR against the applicant and some others in the aforesaid matter on 22.06.2004 and the criminal case is pending trial.



4. The further facts of the case are that the applicant requested the authorities to release the subsistence allowance as well as change his headquarter to Jaipur/Jodhpur since his children were studying at Mumbai and Kota and he was faced with peculiar domestic problems. His request for change of headquarters was not accepted and he was also advised vide order dated 04.08.2004, to report to the Commissioner, Central Excise, Ranchi, who would also consider the payment of subsistence allowance. He reiterated the illness of his mother and requested for change of his headquarters from Ranchi to Jodhpur with an undertaking that he would not claim any benefit like that of TTA etc which may burden the government on change of headquarters. He also asserted that if his headquarter cannot be changed he may be granted voluntary retirement and provisional pension with effect from 15.11.2004 or earliest on provisional basis subject to the decision in the criminal case. The same was followed by reminders. The applicant also filed an O.A. No. 71/2005, S.L. Bansal vs. UOI and ors, on 03.01.2005 before the Principal Bench of this Tribunal. In that case, he prayed for a direction to the respondents to pay him subsistence allowance/salary for the entire period from 05.03.2004 along with interest at the rate of 12% per annum and also to quash the suspension order dated 05.03.2004. The prayer in respect of the quashing of the suspension order was forgone at the time of hearing of the same. The said O.A came to be disposed of on 30.11.2005 with a direction to the respondents to pay the subsistence allowance in accordance with rules and instructions in the event the applicant reports at Ranchi and within a period of four weeks thereafter dispose of his representation relating to the request for change of headquarters. He went to Ranchi on 28.02.2006 and drawn

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his salary as well as subsistence allowance for the period from 5.3.2004 to 28.02.2006 under protest and subject to the outcome of the instant O.A. He applied for permission to the leave the headquarters for 22 days vide his application dated 01.03.2006, which was accepted. Sequel to the aforesaid directions of his request for change of headquarters from Ranchi to Jaipur has also accepted. Presently the applicant is residing at Jodhpur.

5. As regards the variances in facts, it has been asserted by the respondents that the Review Committee had considered and extended the suspension of the applicant from time to time and the version that the suspension period was not extended beyond 11.08.2004 is contrary to the records in as much as the suspension period was extended for a period of 180 days vide communication dated 30.06.2004 (Annex. R/1) and so on. The applicant did not adhere to the instructions to remain at the headquarters and continued to send representations for paying him the subsistence allowance, change of headquarters etc. He was also issued with a memo on 29.11.2004, to explain his conduct in this regard. The same was replied by the applicant vide his letter dated 27.12.2004. It has also been averred that the letter dated 11.08.2004 (Annex. A/8) is a representation for change of headquarters and the same cannot be construed as an application for voluntary retirement. The application for retirement is to be made to the appointing authority without any condition. Since, the applicant has not retired from service, no pensionary benefit is admissible to him. No cause of action has arisen to him and the O.A deserves to be dismissed in limine. The same is otherwise rendered



infructuous as he has reported at Ranchi on 28.02.2006, and received the payments due to him.

6. From the side of the applicant it has been averred that the application dated 11.08.2004 seeking retirement was addressed to the Deputy Secretary, who was acting on behalf the President of India and was also his controlling officer. Even if such authority was not competent for the same and there was any objection, it was incumbent on the part of the Deputy Secretary, to inform the applicant or to refuse the same within the notice period and having not done so, the applicant stood retired from service with effect from 15.11.2004.

7. The learned counsel for the applicant has elaborately argued by reiterating the facts and grounds raised on behalf of the applicant in his pleading as noticed above. He has contended that Annex. A/8 is very much a notice of voluntary retirement and the same contained the specific words that his request for voluntary retirement is unconditional. As per the provisions envisaged in FR 56 (k) (1), the applicant stands retired on 15.11.2004 since he has not been communicated the refusal to his request. He has submitted that the payments made to him on account of subsistence allowance were accepted by him under protest and subject to the result of this O.A and the payments so made could be adjusted against his retiral benefits that may be payable to him on account of his voluntary retirement. He has cited certain authorities and OM in support of his contentions. These will be dealt with in later part of this order. He was confronted with the query from the side of the Court as to how this Bench of the Tribunal has territorial jurisdiction to entertain this

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O.A since no cause of action either in full or in part has arisen within the territorial jurisdiction of this Bench. He has submitted that the applicant has filed this O.A by invoking the provisions of Rule 6 of the CAT (Procedure) Rules, 1987 and this Bench has got jurisdiction to entertain this O.A since the applicant is ordinarily residing at Jodhpur after retirement.

Q. The learned counsel for the respondents with equal vehemence opposed the contentions raised on behalf of the applicant. He has contended that the applicant never wanted to join at Ranchi and has been trying to enjoy all the possible benefits by making multiple communications on one pretext or the other. He was also granted permission to leave the Headquarters for 22 days and his headquarters has also been subsequently changed to Jaipur.

Q. The learned counsel for the respondents reiterated the defence of the respondents as set out in the reply regarding the very application for retirement. He made me to traverse through the contents of the same and submitted that it was an application for change of his headquarters during the suspension period wherein he inserted a threatening clause giving it a shape of notice for retirement with multiple conditions. The request for retirement has to be made unconditionally. He placed reliance on one of the judgements of the Apex Court in the case of **Dr. Prabha Atri vs. State of UP and ors.** [AIR 2003 SC 534] and submitted that even though that case was regarding the resignation, but the ratio laid down therein would also apply to the facts of the instant case and therefore the respondents rightly did not take cognisance to the said application. He also



contended that dispute relating to the suspension order has been set at rest on forgoing the same after having made a specific claim before a court of law. The various assertions made in the subsequent communications especially the payment of subsistence allowance shall be subject to the result of this O.A is of no consequence since there was no valid notice for retirement and the question of acceptance or refusal thereof did not arise. The O.A deserves to be dismissed with exemplary costs so as to set an example that such frivolous applications are not filed before the Courts of law in future.

10. I have anxiously considered the rival contentions raised on behalf of both the parties. As far the factual aspect of this case is concerned, the same has been noticed above. The claim of the applicant for pensionary benefits may be admissible only if he were retired or deemed to have retired from service as a result of his alleged application for retirement. If he stood retired, the proviso to of Rule 6 of CAT Procedure Rules 1987 (i.e. Notwithstanding anything contained in sub-rule (1), a person who has ceased to be in service by reason of retirement, dismissal or termination of service may at his option file an application with the Registrar of the bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application.), would come into play and this bench of tribunal would have jurisdiction to entertain this OA. In case, it is otherwise, this bench would no jurisdiction over the matter and this position was acceptable to both the learned counsel representing the parties. Thus, it has to be dealt a little later.

11. Firstly, it is considered imperative to determine as to whether the applicant retired or deemed to have retired from service in pursuance with his application for retirement. For this purpose I am required to




find out answer to the questions as to (i) whether the applicant gave the notice of retirement under FR 56 (k)(1) to the appropriate authority, (ii) whether the request for voluntary retirement was unconditional, (iii) some more ancillary questions. I find it expedient to reproduce an excerpt of the relevant FR as under:

"Fundamental Rules 56 (k)"

(k) (1) Any Government servant may by giving notice of not less than three months in writing to the appropriate authority retire from service after he has attained the age of fifty years, if he is in Group 'A' or Group 'B' service or post, (and had entered Government service before attaining the age of thirty five years), and in all other cases after he has attained the age of fifty five years;

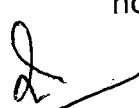
(a) & (b). xxx

(c). It shall be open to the appropriate authority to withhold permission to a Government servant under suspension who seeks to retire under this clause."

12. The bare perusal of the aforesaid rule makes it evident that one who completed of 50 years of age and entered in service before attaining the 35 years of age may retire from service after giving notice of not less than three months. The same does not need any specific acceptance but can be withheld in case one is under suspension. In the instant case the request of the applicant for change of Hqrs during suspension was turned down on 4.8.2004. The applicants protested and represented against the same vide his application-dated 11.8.2004. After elaborately narrating the diverse grounds for change of his Hqrs, he mentioned the following words in regard to voluntary retirement:

"Sir, to avoid any complication in my service and retirement benefits I also request that if my headquarter cannot be changed in view of above serious (sic- serios) problems, I may be granted VOLUNTARILY RETIREMENT W.E.F. 15.11.2004 or earliest on provisional basis (subject to decision of case for which I was placed under suspension) and I may be granted provisional pension. I, undertake that above request is unconditional, without any force or protest that above request is unconditional, without any force or protest and voluntarily (sic - voluntarrrly) made by me. I undertake to cooperate in any investigation (sic-investigarion) or department matter after provisional retirement."

16. Adverting to the first issue i.e. as to whether the applicant gave the notice of voluntary retirement under FR 56 (k)(1) to the appropriate authority- the appropriate authority to accept the request for retirement in case of applicant who was holding the Group A post would be the President of India, being his appointing authority. There is no dispute on this point. Admittedly, the so-called application for retirement was addressed to the Deputy Secretary to Govt of India Min of Finance (R-3). The contention of the learned counsel for the applicant that the application for retirement was rightly addressed to Respondent No. 3 since he was applicant's controlling authority and even he signed the suspension order on behalf of the President of India, does not appeal to the reason. The 3rd respondent may be the communicating authority but cannot become the appointing authority merely because he has conveyed the decision of the President of India. Same is the fate of the version of the applicant that the 3rd respondent should have either informed the applicant regarding the infirmity or else refused the retirement. No rule has been brought to my notice in support of this contention. The very FR 56(k) (1) prescribes that the notice is to be given to the appropriate authority, which the 3rd respondent is admittedly not. It cannot meet the scrutiny of law. I am fortified in my view from the decisions in case of **Taylor v. Taylor**, (1875) 1 Ch. D. 426 laying down hitherto uncontroversial legal principle that where a statute requires doing a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden. The rule is well recognized and is founded on sound principle. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted. I have no hesitation in holding that the




applicant did not make any request to the appropriate authority and therefore question of any acceptance did not arise. The question No. (i) is accordingly answer in negative. On this count alone, the OA cannot be sustained.

14. The applicability or otherwise of the OM and various authorities cited on behalf of the applicant is summarised as under:

OM No. 25013/31/83-Estt (A) dated 30.3.1984- Withholding of permission to retire when placed under suspension after receipt of notice.

This OM has no application to this case since applicant was placed under suspension from a much earlier date of submission of so-called notice of retirement.

State of Tamil Nadu and ors Vs. R. Karuppliah [2005 (3) ATJ 110 Madras HC

The Judgement was rendered in a different context and has no application to this case. In that case, the challenge was regarding initiation of disciplinary proceedings under Rule 9(2) (a) and 9 (6) (b) of Tamil Nadu Pension Rules, 1978. In the instant case no disciplinary proceedings are in existence.

AN Saxena vs. UOI and ors. [1990 (1) SLJ CAT 17, Union of India and ors. Syed Muzaffar Mir [1995 SCC (L&S) 256 and B J Shelat vs. State of Gujarat [1978 SCC (L&S) 208]

In these cases it has been held that the Voluntary Retirement under FR 56 (k) (1) is by efflux of the notice period of three months and not dependent on acceptance of the competent authority. It shall be open to the appropriate authority to withhold permission to a Government servant under suspension who seeks to retire under this clause. The Rules position has been illustrated but the same also no application to the facts of the instant case since there was no application for voluntary retirement to the appropriate authority and a non-existing application cannot be accepted as held in the succeeding paras.



15. In case of **Dr. Prabha Atri Vs. The State of U.P. & ors. AIR 2003 SC 534**, cited on behalf of the respondents, their Lordships of Apex Court were dealing with a case of resignation. The resignation letter of the employee concerned therein was worded in the following terms:

"Your letter is uncalled for and should be withdrawn. I have been working in this Hospital since May 10, 1978 and have always worked in the best interest of the patients. It is tragic instead of taking a lenient view of my sickness you have opted to punish me. If the foregoing is

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not acceptable to you then I have no option left but to render my resignation with immediate effect."

The same came to be accepted and the individual was relieved of her duties. She challenged the same and the Hon'ble High Court Allahabad was pleased to uphold the order of the appropriate authority and the matter was appealed against before the Apex Court. Their Lordships of Supreme Court were pleased to observe as under:

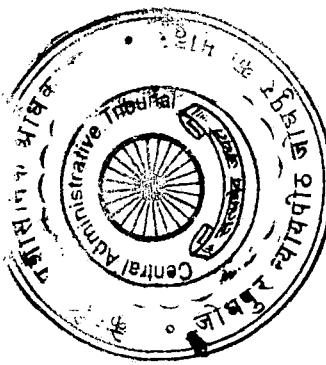

 "We have carefully considered the submissions of the learned counsel appearing on either side, in the light of the materials and principles, noticed supra. This is not a case where it is required to consider as to whether the relinquishment envisaged under the rules and conditions of service is unilateral or bilateral in character but whether the letter dated 9.1.1999 could be treated or held to be a letter of resignation or relinquishment of the office, so as to sever her services once and for all. The letter cannot be construed, in our view, to convey any spontaneous intention to give up or relinquish her office accompanied by any act of relinquishment. To constitute a 'resignation', it must be unconditional and with an intention to operate as such. At best, as observed by this Court in the decision in P.K. Ramachandra Iyer (supra) it may amount to a threatened offer more on account of exasperation, to resign on account of a feeling of frustration born out of an idea that she was being harassed unnecessarily but not, at any rate, amounting to a resignation, actual and simple."

16. Though the aforesaid case was related to resignation of an employee but the principles of law laid down therein fully apply to the instant case; there being certain similarities in resignation and the retirement. Both should be unconditional and not on account of exasperation of the person concerned. Further, the issue relating to the interpretation of the letter of resignation has been illustrated. Here also the interpretation of the application for retirement is involved. The application was almost clothed in similar terms in as much as the main grievance was relating to the request for change of headquarters. The clause relating to retirement was superimposed and inserted with multiple conditions namely, (i) grant retirement if his headquarter cannot be changed, (ii) retirement on provisional basis, and (iii). subject to decision of case for which he was placed under suspension etc. The word 'conditional' means qualified, having

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conditions, with reservations, restrictive, provisional, provisory, stipulatory as per Oxford dictionary. The aforesaid applicant has to be construed as conditional and does not convey any spontaneous intention to give up or relinquish his office accompanied by any act of relinquishment. Thus the submissions of the learned counsel for the respondents deserve to be endorsed. In service jurisprudence, there is no concept like that of 'retirement on provisional basis'. Such conditional request has no existence in the eye of law as held in the aforesaid decision by the Apex court. The letter can aptly be said to be a threatening due to exasperation of the applicant. The action of the respondents in not taking any cognizance of the representation Annex A/8 so far it relates to retirement of applicant, cannot be faulted with since the same cannot be construed as notice of retirement and one cannot retire from service in absence of requisite notice. Therefore the applicant has no cause of action what-so-ever calling for any judicial scrutiny. Needless to say that in such situation this Bench of the Tribunal would not have any jurisdiction in the matter.

17. Before parting with this order, I must notice certain peculiar facts causing anxiety and doubts due to paucity/non-disclosure of material information. Firstly, the applicant was admittedly absent upto 5.3.2004 since no leave was granted to him and he was also suspended almost in continuation of his absence, w.e.f. 5.3.2004, which was not only in contravention to the Government's instructions but also resulted in extending him a favour in disguise; burdening the public exchequer. The Hon'ble PB of this Tribunal was pleased to direct payment of subsistence allowance in accordance with rules and instructions and the respondents released the same even though the



applicant remained absent and away from his Hqrs without permission which falls within the four corners of misconduct as per the verdict of Apex Court in case of **State of Punjab and Ors Vs. Charanjit Singh** 2004 (1) SLJ 238 SC; holding that one can be charged for absence for leaving Hqrs without permission while under suspension. A memo was issued regarding his absence from Hqrs which was immediately replied but no further action has been considered expedient. The whole episode could have been avoided if the respondents would have acted as per the rules.

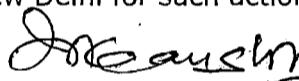
18. The applicant also has been travelling in the same boat in as much as he projected before the Principle Bench as if he were very much in service and this position is evident from the very order wherein it was directed that after he reports at Ranchi for payment of subsistence allowance, an order for change of Hqrs shall be passed. Obviously, the order for change of Hqrs could not have been passed, in case applicant whispered about so-called deemed retirement. Further, in case such an order was passed inadvertently as there was no specific prayer to this effect in OA No. 71/2005 ibid, nothing prevented the applicant to get the same corrected. But he surreptitiously chosen to enjoy the benefits without any demur and even the possibility of concerted effort of the applicant with respondents cannot be ruled out. In the cause title to this OA he has shown himself as Ex. Assistant Commissioner, Custom and Central Excise (ICD) Ballabgarh, Distt. Faridabad, Haryana (under transfer order to Central Excise Commissionerate, Ranchi, Jharkhand). It is difficult to understand as to how he can call himself as an ex-employee as well as under transfer; the version being diametrically opposite to each other. He

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also sought permission to leave the Hqrs i.e. Ranchi for 22 days vide his written request vide letter dated 1.3.2006. I may make it clear, in fairness to the both the parties, that the above observations may not be regarded as conclusive but nevertheless fresh look would be appreciated.

19. In view of aforesaid analysis and discussion, I reach to an irresistible conclusion that there was no notice for retirement and the applicant cannot be deemed to have retired. Consequently, the OA is dismissed for want of jurisdiction. It is not necessary to give any liberty to applicant for filing the case in the same matter before appropriate forum since very claim of pensionary benefits is sequel to retirement which is negated. No costs.

Finally, I direct the Registry of the Bench of Tribunal that a copy of this order be sent directly to the Secretary to the Ministry of Finance, Department of Revenue, North Block, New Delhi for such action as they deem fit.


(J K KAUSHIK)
JUDICIAL MEMBER

JSV



Regd Speed Post Copy of order of

30/8/2006 sent to Sec. of Finance,

New Delhi vide No 1108 dt. 31/8/06

Recd Adm on 11/11/06
Served in due
time 11/11/06

See copy of order dt. 30/8/06.

S. Krishnan
Adv.
Counsel for Applicant
01/9/06

R/C
Served 1/9/06
For LK notarized
Adm

Part II and III destroyed
in my presence on 24/4/14
under the supervision of
Section Officer (J) as per
order dated 31/4/14

Section Officer (Record)