

(II)

CENTRAL ADMINISTRATIVE TRIBUNAL JODHPUR BENCH

**ORIGINAL APPLICATION NO. 130/2009
JODHPUR THIS DAY 5th August, 2009**

HON'BLE Dr. K.B. SURESH, JUDICIAL MEMBER

Dr. Raman Sachdev S/o Shri D.S. Sachdev,
Aged 54 years, R/o C-117, Saraswati Nagar,
Jodhpur (Raj.).

Working as Scientist "E" Desert Medicine Research Centre Pali Road,
Jodhpur (Raj.).

.... Applicant

For Applicant : Mr. Vivek Shah, Advocate.

VERSUS

1. Union of India through the Secretary-cum-Director General, Indian Council of Medical Research, Department of Health Research, Min. of Health & Family Welfare, V. Ramalinga Swami Bhawan, Ansari Nagar, New Delhi-110029.
2. Director (Officer in Charge), Desert Medicine Research Centre, New Pali road, Jodhpur (Raj). 342005.

.... Respondents.

**For Respondents 1 & 2 : Mr. M. Godara, proxy Counsel for
Mr. Vinit Mathur, Advocate.**

ORDER

[PER Dr. K.B. SURESH, MEMBER (J)]

The applicant vide his application **Annexure-A/2** dated 01st April, 2009 requested to accord to him voluntary retirement from service and also requested to waive the period of notice. To this request, the competent authority vide letter dated 02nd April, 2009 produced as **Annexure-A/3** directed the applicant to intimate the reasons for his voluntary retirement so as to enable the competent

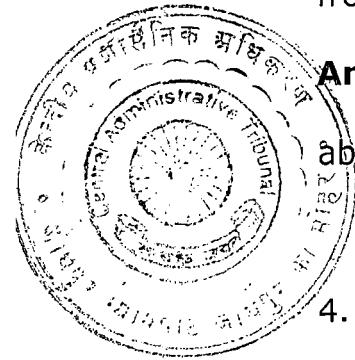


authority to consider the curtailment of the period of notice of three months. An undertaking was also required from him to the effect that he will not apply for commutation of part of his pension before the expiry of period of notice of three months. The applicant thereupon, vide **Annexure-A/4** dated 06th April, 2009 replied that he had had enough and gave an undertaking that he will not apply for commutation of part of pension before the expiry of notice period of three months.

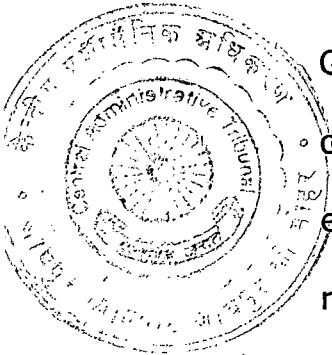
2. Apparently, thereafter the applicant desired that the reasons which compelled him to seek voluntary retirement may not necessarily exist anymore and thereupon vide **Annexure-A/5** dated 23rd June, 2009 he withdrew his request for voluntary retirement. The said request (Annex.A/5), was received by the concerned authority on the same day itself i.e. 23rd June, 2009.

3. But vide **Annexure-A/6**, on 25th June, 2009 and in compliance with ICMR letter (Fax) No.P-19(38)/87-Pers dated 25th June, 2009 the applicant was relieved of his services with effect from the afternoon of 25th June, 2009. This was followed by **Annexure-A/1** and the letter of the Director General which cited above is now under challenge.

4. The respondent would say that the Head of Office had forwarded the letter dated 23rd June, 2009 withdrawing the request of voluntary retirement to the Director Incharge only on 02.07.2009



and, therefore, the Director General was not in receipt of request of the applicant for the reconsideration of his voluntary retirement. He would not explain why he had thought it fit and proper to delay the proceeding in a matter as serious as withdrawal of the request of voluntary retirement. Especially in view of the fact that the three months would only expire on 01.07.2009, therefore, the action of the Head of Office in keeping the file pending with him, apparently without informing his superior officer till 02.07.2009 appears to be deplorable. In any case the Head of Office had promptly replied to the letter dated 01.04.09 on the next day itself to the applicant that is on 02.04.2009. It cannot be presumed that he did so without application of mind and consultation with the superiors. Thereafter also the Head of Office have forwarded the necessary papers to the Executive Committee of the ICMR. The respondents have contended that they have not placed the matter before the ICMR Committee or the Director Incharge as to what was happening in the Office. Even though it is not so fully explained in the reply. The indication is that the withdrawal of request for voluntary retirement was not within the knowledge of the Executive Committee and Director Incharge as on 25th June, 2009. It may very well be so but if it is so, for the reason of failure of the Director Incharge and the Executive Committee of ICMR the applicant need not be prejudiced. The Head of Office Dr. K. V. Singh may or may not have a sufficient explanation for not forwarding the withdrawal of voluntary retirement application of the applicant to his superior officer, but the fact remains that the Director Incharge and the Executive



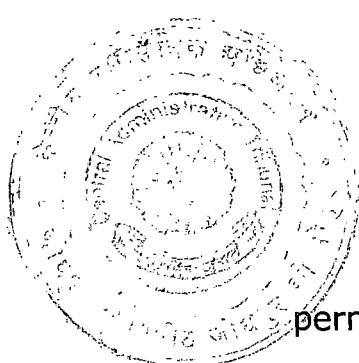
Committee acted without grasping the essentials of the matter and if at all they had acted on an offer that is already withdrawn and therefore not in existence, they were unable to apply their mind to the actual situation. Whether deliberately or otherwise the Head of Office had concealed from them that the offer they were considering had already been withdrawn. The delay or latches of the part of the Head of Office cannot visit with any adverse effect on applicant in the light in spirit of Supreme Court Judgment in **Balram Gupta Vs. Union of India & Anr.** [Reported in AIR 1987 SC 2354] the Lordships of the Apex Court while reporting with approval the Central Civil Service (Pension) Rules (1972), Rule 48-A(4) Held:

"3. The appellant states that three months notice was required by the rules of service to which the appellant belonged. The said voluntary retirement was sought under Rule 48-A of the Central civil Services (Pension) Rules, 1972 (hereinafter referred to as 'the Pension Rules'). The Rule 48-A provides as follows:

"48-A. Retirement on completion of 20 years' qualifying service.- (1) At any time after a Government servant has completed twenty years' qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority, retire from service.
(2) The notice of voluntary retirement given under sub-rule(1) shall require acceptance by the appointing authority.

Provided that where the appointing authority does not refuse to grant the permission for recruitment before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period."

Therefore, since the authority had not specifically granted permission for retirement before the expiry of the period of three months the retirement shall only become effective from 01.07.2009.



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An inclination not evident on the face of record must be concluded to mean that, even for this reason the impugned order is illegal and the result of non application of mind. The same was again considered by the Hon'ble Apex Court in **Shambhu Murari Sinha Vs. Project & Development India Ltd. & Anr.**, reported in (2002) 3 SCC 437 where their Lordships held:

"There is no condition in the relevant Scheme that once an option to voluntary retire is exercised by an employee and the same is accepted by the employer, the employee would not be entitled to withdraw from voluntary retirement. (Para 5)

Admittedly, the appellant was paid his salaries etc. till his date of actual release i.e. 26-9-1997, and, therefore, the jural relationship of employee and employer between the appellant and the respondents did not come to an end on the date of acceptance of the voluntary retirement and the said relationship continued till 26-9-1997. The appellant admittedly sent two letters withdrawing his voluntary retirement before his actual date of release from service. Therefore, the appellant had *locus poenitentiae* to withdraw his proposal for voluntary retirement before the relationship of employer and employee came to an end. The appellant is entitled to rejoin his duty and he should be paid all his salaries and other benefits during the period he was out from the service. However, in case of having retired by the time of the decision herein, he should be paid full salary and allowances for the entire period he was out of service till the date of his retirement and thereafter, he would be entitled to get all retiral benefits counting the above period as if he was in service."

Similar is the case of **Food Corporation of India & Others Vs. Ramesh Kumar** reported in (2007) 8 SCC 141 Lordship held:

"The Scheme of Food Corporation, Para VIII(d) clearly stipulated that the incumbent had no right to revoke the same and the Management would decide the same within three months. That means the Management still had three months' time to consider and decide whether



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to act upon the offer given by the incumbent or not. But if the incumbent revoked his offer before the Corporation accepted it then in that case, the revocation of the offer was complete and the Corporation could not act upon that offer. In the present case there was one more additional factor which was that the Management had to take a decision within three months. Therefore, once the revocation was made by the incumbent before three months then in that case the Corporation could not act upon the offer of voluntary retirement unless it was accepted prior to its withdrawal. In the present case, it is clear that the incumbent had given an offer for voluntary retirement on 13-9-2004 and the revoked his offer on 27-9-2004 but the same was accepted on 9-11-2004 i.e. after the revocation of his offer. In view of the law laid down by the Supreme Court in *State Bank of Patiala v. Romesh Chander Kanoji*, the incumbent has already revoked his offer before it could be accepted. Therefore, in this view of the matter, the approach of the High Court appears to be correct and does not require any interference."

4. Therefore I hold that the applicant had every right withdraw the offer for voluntary retirement before its acceptance and he had infact done so and he cannot be held responsible for any delay or latches on the part of the Head of Office. Therefore the following directions are issued:-

- (a) The **Annexure-A/1** and consequent proceedings are hereby quashed.
- (b) It is directed the applicant be taken back in service with the same effect as if he continued to be in service from 25.06.2009 onwards without any break and pay to him all consequential benefits including salary, allowances and other service benefits, which had accrued in the interim.

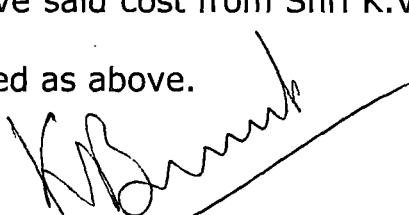


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In view of the circumstances of the case and the needless agony brought on to bear on the applicant, the respondents are directed to pay a cost of Rs.2,000/- to the applicant and in view of the failure on the part of Shri K.V. Singh the respondent no.1 is allowed to realize the above said cost from Shri K.V. Singh the Head of Office. The OA is allowed as above.



[Dr. K.B. SURESH]
JUDICIAL MEMBER

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PK
Part II & III
Part II & III
7/8/15

S
7/8/15

Part II and III destroyed
in my presence on 8/1/15
under the supervision of
Section officer () as per
order dated 07/07/2015

Section officer (Record)