CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Transferred Application No. 180/00012/2015 (W.P © No. 19279 of 2006)

&

ORIGINAL APPLICATION NOs. 473/2013 & 180/00929/2014

Friday this the 23rd day of September, 2016

CORAM

Hon'ble Mr. Justice N.K.Balakrishnan, Judicial Member
Hon'ble Mrs. P. Gopinath, Administrative Member

TA 12/2015

C.R. Venmani S/o late C.K.Raman,
Chirayath House PO. Vadakkummuri
Peringottukara,
Thrissur District
Ex.E.A(Elec) Andaman Harbour Works,
Little Andaman. ..Applicant

(By Advocate Mr. P.K. Madhusoodanan (rep.by Mr.Binoy)

Vs.

1 Deputy Chief Engineer (LA)
Ministry of Shipping & Transport,
Andaman Harbour Works, Little Andaman,
Andaman Islands.

2 Joint Secretary to the Government of India,
Ministry of Shipping, PE-II Section,
New Delhi.

3 Union of India represented by its Secretary to
Ministry of Shipping, PE-II Section,
New Delhi. ...Respondents

(By Advocate Mr. N.Anilkumar Sr.PCGC (through Mr. Sinu G.Nath)

OA 473/2013

P.M.Raghavanunni, aged 70 years
S/o ParameswaranNair, Sreelakshmi,
Sreenagar Colony,
Kunnahurmedu Post,
Palakkad.-678013. ..Applicant

(By Advocate Mr. U.Balagangadharan)

Versus

1 Union of India, represented by the Secretary ,
Ministry of Defence, South Block, New Delhi-110 001.

2 Controller of Defence Accounts (Pension)\
Allahabad-211014.

3 The Controller General of Defence Accounts,
West Bock, No.5, .K.Puram, New Delhi.1.

4 The Controller of defence Accounts, Southern Command,
No.1,Finance Road, Pune.1.

5 The Engineer in Chief, Army Headquarters, New Delhi-110 001.

6 The Secretary to Government of India,
Department of Pension & Pensioners' Welfare,
Ministry of Personnel, Public Grievances and Pension,
North Block, New Delhi-110 011.

.....Respondents

(By Advocate Mr. N.Anilkumar Sr.PCGC (through Mr. Sinu G.Nath)

OA 929/14

Shri N. Unnikrishnan Nair, aged 72
Son of late V.N. Narayana Pillai,
Padathu Puthenpura,Chempu PO
Vaikom, Kottayam District,
Kerala-686608. ..Applicant

(By Advocate Ms. Smitha George)

Vs.

1 Union of India, represented by its Secretary,
Ministry of Health & Family Welfare,
Government of India, Nirman Bhawan, New Delhi-110108

2 Ministry of Personnel, Public Grievances and Pensions,
Department of Pension & Pensioners' Welfare,
represented by its Secretary, 3rd floor,
Lok Nayak Bhawan, Khan Market, New Delhi-110 003.

3 Directorate General of Health Services (Administration)
represented by its Deputy Director (Admn), Nirman Bhawan,
New Delhi-110108.

4 Deputy Director (Admn)
Central Health Education Bureau,
Temple Lane, Kotla Road,
New Delhi-110 001. ...Respondents

(By Advocate Mr. SRK Prathap, ACGSC)

The above applications having been finally heard on 01.09.2016, the Tribunal on 23.09.2016 delivered the following:

ORDER

Per: Justice N.K. Balakrishnan, Judicial Member

This petition was originally filed before the Hon'le High Court as WP(C) 19279/2006. It was thereafter transferred to this Tribunal and renumbered as TA 12/2015.

2. The gist of the case pleaded by the applicant is as follows.

3. The applicant had served in Andaman Harbour Works under the first respondents originally as Sub Overseer and in different capacities thereafter till 19.5.1982. He had unblemished service records during the said period. Due to compelling reasons he had to apply for long leave. Since that was not granted resignation letter was obtained from the

applicant. It was accepted by the respondents. Except paying the general provident fund amount, no other amount was paid to him, though he had 11 years of meritorious service. His claim was rejected on the ground that as he had resigned from service he is not entitled to get pension and other benefits in view of Rule 26(1) of CCS (Pension) Rules. Hence he seeks a declaration that Rule 26(1) of CCS (Pension) Rules is unconstitutional. He further seeks a direction to be issued to the respondents to grant him pension and other benefits.

4. The claim is stiffly resisted by the respondents contending that the applicant had voluntarily resigned from service and that the respondents had accepted his resignation. Since he had resigned from the post, he is not entitled to get pension or other benefits in view of Rule 26 of CCS (Pension) Rules. The contention that the rule is unconstitutional is totally unacceptable. Hence the respondents prayed for dismissal of the OA.

5. In OA 473/2013 the applicant contends that he had rendered 17 years and 6 months of service in Military Engineer Services. He had to tender resignation due to personal reasons. He was denied pension and other benefits relying on Rule 26(1) of CCS (Pension) Rules. The applicant had earlier filed OA 1029/2000 seeking pension but it was dismissed (Annexure A4) on the ground of limitation, which was challenged by the applicant before the Hon'ble High Court in OP 32713/2008. The High Court set aside Annexure A4 order passed by this Tribunal on the ground that the

cause of action is recurring in nature and so the matter was remitted to this Tribunal. The Tribunal again considered the OA on merit and it was dismissed relying on Rule 26(1) of CCS (Pension) Rules. That was again challenged before the Hon'ble High Court attacking the constitutionality of the provision namely Rule 26(1) supra. The High Court dismissed the Writ Petition with the observation that the constitutionality of CCS (Pension) Rules is to be challenged before the Tribunal. He seeks to declare Rule 26 (1) of CCS (Pension) Rules as ultra vires and unconstitutional and for consequential benefits.

6. This application is strongly opposed by the respondents contending that CCS (Pension) Rules were codified in 1972 and has been in existence since then. Challenge against the said Rule is untenable. No representation was submitted by the applicant withdrawing his resignation letter. There was actually a forfeiture of his past service because the applicant voluntarily resigned from the post. The applicant is not entitled to pension as he is not a person retired on superannuation or invalidation. The contention that Rule 26(1) of CCS (Pension) Rules, is unconstitutional is without any basis. Hence the respondents prayed for dismissal of the OA.

7. The applicant in OA 929/2014 has also raised similar contentions. According to him he joined the Ministry of Finance on 24.1.1963 and reported back to Ministry of Defence on 24.9.1963. He was relieved with effect from 15.9.1966 with a direction to report to the Ministry of Health on

15.9.1966. He was appointed as Stenographer Gr.II in the Health Department with effect from 1.5.1971. On 26.3.1973 he was granted leave from 3.3.1973 to 1.7.1973 to go abroad. He submitted his application on 19.6.1973 and 19.9.1973 to the third respondent requesting extension of leave upto 31.12.1974. Since the required permission was not given the applicant sent a letter requesting acceptance of his resignation and he tendered resignation, which was accepted by the President of India. His request for getting arrears of salary, gratuity etc., was not considered by the respondents. The applicant was not given retirement benefits. It was denied relying on Rule 26(1) of the CCS (Pension) Rules. Though representations were given the applicant did not get the reliefs sought for. Since the claim was denied relying on Rule 26(1) of CCS (Pension) Rules the applicant contends that the said rule is unconstitutional and has to be struck down. He also seeks a declaration to be issued to the respondents to count his service for granting pension.

8. This application is also stoutly opposed by the respondents raising similar contentions as are raised in the other two applications. The request made by the applicant for stay abroad was not entertained and he was intimated that extension of stay abroad will be treated as unauthorized absence. As per Annexure A4 the applicant voluntarily resigned from the service. The same was accepted by the respondents. He did not seek withdrawal of his resignation letter. The applicant went to meet his wife

who was in Libya availing leave upto 1.7.13. Thereafter he remained unauthorizedly absent for a long time. When the applicant proceeded to Libya he was holding a responsible post of Personal Assistant and Secretary. A person holding a responsible post remained abroad for his own personal reasons. He never returned to India to join the duty. Therefore, he remained to be unauthorizedly absent for a long period and it was thereafter he tendered his resignation. It was accepted by the competent authority on 18.7.1977 retrospectively from 20.1.1976. The contention that Rule 26 (1) of CCS (Pension) Rules is unconstitutional is opposed by the respondents. The contention that the applicant was compelled to resign because he was not granted leave is not correct. He was actually granted leave on humanitarian consideration to meet his wife. It was after enjoying that leave the applicant voluntarily submitted the resignation letter. The contention that Rule 26 (1) of CCS (Pension) Rules is unconstitutional is unfounded and unsustainable.

9. Since in all above three cases, the issue is as to the constitutionality of Rule 26(1) of CCS (Pension) Rules, all these cases are heard together and a common order is passed.

10. The short point that arises for consideration is whether Rule 26 (1) of CCS (Pension) Rules is unconstitutional?

Rule 26(1) of CCS (Pension) Rules read as follows:

"26. Forfeiture of service on resignation

> (1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service."

11. Admittedly in all these cases there is no case for the applicants that subsequent to the tendering of resignation they had submitted any application for withdrawal. It is also the admitted that in all these cases resignation was accepted by the competent authority. They have come forward to challenge the Rule after several years of the acceptance of resignation. The applicant in TA 12/15 had in fact filed the WP before the High Court in the year 2006 complaining that he was denied pension. It was held by this Tribunal that in view of his resignation he is not entitled to get the pension in view of Rule 26(1) of CCS (Pension) Rules. Thus he has now come forward with a plea that the said rule is unconstitutional. Similar is the case with respect to the applicant in O.A 929/2014 as well. In that case the applicant had submitted his resignation in January, 1976 which was accepted by the President of India on 20.1.1976. That means he has now approached this Tribunal nearly after 37 years. It seems the constitutionality has been now challenged by the applicant presumably on the basis of a Single Bench decision of the Hon'ble High Court of Kerala in ***Varghese Vs. State of Kerala and others 2014 (1) KLT 1077.*** In that case Rule 29 (a) of Part III of Kerala Service Rules was held unconstitutional and ultra vires so far as it relates to denial of pension to persons who resigned from service not on account of any disciplinary

proceedings or intended disciplinary proceedings. The decision rendered by the Single Bench of the Hon'ble High Court has been reversed/overruled by the Division Bench in ***State of Kerala Vs. Varghese – 2016 (2) KLT 175***.

12. It is vehemently argued by the learned counsel for the applicants that pension is to be treated as a deferred payment, which means a money accumulated from the deemed deduction from the pay and allowances during the period of service and paid on severance. According to the applicants a portion of pay and allowances is withheld every month by the employer and it is paid on the culmination of service giving it the name as Pension. Therefore, according to them even if a person resigned from service on his own volition, there would be no justification for denying proportionate pension, for, according to him, during the period of service the employer must have certainly deducted the amount as aforesaid from the pay/salary of the employee every month. It is further contended that even in the case of dismissal/removal, the employee may be entitled to get compassionate allowance and if that be so it would be all the more reasonable to contend that the person who voluntarily resigned from service is entitled to get at least proportionate pension. Therefore, according to the applicants the rule which provides or entails total negation of pension is actually unreasonable and so Rule 26 (1) of CCS (Pension) Rules is to be held unconstitutional.

13. It is also contended that as per Rule 40 of CCS (Pension) Rules a government servant who compulsorily retires from service as a penalty can be granted, by the authority competent to impose such penalty, pension or gratuity or both at a rate not less than 2/3 and not more than full compensation pension or gratuity or both admissible to him on the date of his compulsory retirement and so there is no reason or justification to deny at least such a relief to a person who happens to resign from service due to compelling reasons. According to the applicants if pension is treated as a deferred payment; to mean, that it is only the amount accumulated by deducting such amount from the Pay/salary then it would be actually the employee's own money though it was withheld by the employer during the period of service. If that is so by denying the proportionate pension the employer would be getting unjust enrichment, the learned counsel for the applicants argues. It is actually a misplaced theory. That is often said with respect to bonus and not with respect to pension, the respondents contend. The applicants would rely upon the decision of the Supreme Court in ***DS Nakará's case – AIR 1983 SC 130*** where it was held that the pension is not a bounty but is an indefeasible right. But it is argued that it is a right with attendant responsibility of serving the employer for a prescribed period. The applicants would even contend that if pension is treated as deferred payment, to mean; that it is a monthly amount deducted monthly from the salary of the employee, it would be akin to the contributions made to the Provident Fund and if on resignation the said amount is not returned to the employee it would lead to negation of the

right to get back his amount which is an indefeasible right accrued to him, for, according to the applicants the amount so kept by the government is in the nature of trust and so the employer/government being the trustee is bound to repay the same to the beneficiary. According to the applicants the intention of the rule making authority, while introducing Rule 26 is not to deprive a government servant who resigned from his service, the right to get pension. The applicants would also rely upon the decision of the Division Bench of the Hon'ble High Court of Kerala in ***Board of Revenue Vs. Parameswaran – 2000 (1) KLT 227*** in support of their contention that pension is a deferred payment. Similarly the decision in ***Raghavendra Acharya Vs. State of Karnataka – 2006(9) SCC 630*** is also relied upon where it was held that pension is not a bounty, it is to be treated as a deferred salary and is akin to right to property. It was held that it is correlated and has a nexus to salary payable to employee after the date of retirement.

14. It is contended by the respondents that Rule 26(1) of CCS (Pension) Rules has been in the statute book from 1972 onwards; it stood the test of time for more than four decades. No court has held that Rule 26 (1) is utlra vires of the constitution. There is reasonable or rational nexus with the object sought to be achieved. The contention that the employee who voluntarily resigns and the employee who submits the resignation seeking permission to take up employment in another government concern

should not be discriminated against is also untenable. Rule 26(2) itself says that the resignation shall not entail for forfeiture of past service if it has been submitted to take up, with proper permission another appointment, whether temporary or permanent under the government where service qualifies. Sub Rule (4) of Rule 26 says that the appointing authority may permit a person to withdraw his resignation in the public interest on the conditions situated therein. Here, admittedly no application was submitted by the applicants withdrawing their resignation. In fact as stated above, it was several years after the acceptance of the resignation they have come forward with this claim for pension ie. in one case it has been filed after about 30 years.

15. In ***V.K. Pathumma Vs. State of Kerala and other s- (2007) 4 KHC 738*** a Division Bench of the Hon'ble High Court of Kerala has considered a case where the petitioner who had resigned from the post contended that the service put in by the petitioner prior to the date of resignation from the previous post should be reckoned for computing the total period of service. Considering an identical provision contained in KSR – Rule 29 which says that resignation of the public service or dismissal or removal from it, entails forfeiture of past service. It was held by the Division Bench that the petitioner therein had signed and submitted the statutory form indicating his resignation on a particular date. It was found that the petitioner therein was not a person who was thrown out of service

for want of vacancy or ousted or retrenched from service but was a case where the petitioner therein had resigned on 1.6.1971 and so it was held that since she had resigned from service it entails forfeiture of her past service and therefore, pre-resignation period could not be counted for the purpose of pensionary benefits under Rule 29(a). This has been referred to here only to contend for the position that once an employee resigns from the post, there is forfeiture of the service as mentioned in Rule 29(a) of KSR which is in *pari materia* with Rule 26 (1) of the CCS (Pension) Rules.

16. Mr. Binoy Krishna, the learned counsel appearing for the applicant, who argued in T.A 12/15 would submit that the Division Bench of the Hon'ble High Court in **State of Kerala v. Varghese (2016) 1 KLT 175** held that Rule 29 (a) is neither unconstitutional nor does it suffer from the vice of discrimination without going into the constitutionality of the provision contained therein but relying on the decision of the Supreme Court in **Union of India v. Braj Nandan Singh (2005) 8 SCC 325.** According to the learned counsel, in ***Braj Nandan Singh*** supra the constitutionality of Rule 26 (1) was not actually dealt with by the Apex Court and as such the observation, if any made by the Division Bench in Varghese's case supra has to be distinguished. We are afraid, we cannot accede to that submission. We have referred to the observationsmade by the Division Bench in ***Chandrasenan's case*** supra also.

17. The rival contentions advanced by the parties in ***Braj Nandan***

Singh's case was dealt with by the Supreme Court in paragraph 5 of that decision which is as under:-

> "In order to appreciate rival submissions Rule 26 which is the pivotal provision needs to be quoted. The same reads as under:
>
> "26. Forfeiture of service on resignation (1) Resignation from a service or post, unless it is allowed to be withdrawn in the public interest by the Appointing Authority, entails forfeiture of past service.
>
> (2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies."
>
> Rule 26 as the heading itself shows relates to forfeiture of service on resignation. In clear terms it provides that resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the Appointing Authority, entails forfeiture of past service. The language is couched in mandatory terms. However, sub- rule (2) is in the nature of an exception. It provides that resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies. Admittedly this is not the case in the present appeal. Rule 5 on which great emphasis was laid down by the learned counsel for the respondent deals with regulation of claims to pension or family pension. Qualifying service is dealt with in Chapter III. The conditions subject to which service qualifies are provided in Rule 14. Chapter V deals with classes of pensions and conditions governing their grant. The effect of Rule 26 sub-rules (1) and (2) cannot be lost sight of while deciding the question of entitlement of pension. The High Court was not justified in its conclusion that the rule was being torn out of context. After the past service is forfeited the same has to be excluded from the period of qualifying service. The language of Rule 26 sub-rules (1) and (2) is very clear and unambiguous. It is trite law that all the provisions of a statute have to be read together and no particular provision should be treated as superfluous. That being the position after the acceptance of resignation, in terms of Rule 26 sub-rule (1) the past service stands forfeited. That being so, it has to be held that for the purpose of deciding question of entitlement to pension the respondent did not have the qualifying period of service. There is no substance in the plea of the leaned counsel for the respondent that Rule 26 sub-rules (1) and (2) has limited operation and does not wipe out entitlement

> to pension as quantified in Rule 49. Said Rule deals with amount of pension and not with entitlement." **(emphasis supplied)**

18. Referring to the afore-quoted portion, the learned counsel further submitted that there is nothing to indicate that the constitutionality of the provision contained in Rule 26(i) CCS Pension Rules was actually adverted to by the Hon'ble Supreme Court and so according to the learned counsel no ratio as such was laid down by the Hon'ble Supreme Court as to the vires or constitutionality of Rule 26(1). But the underlined portions in the decision quoted above would make it clear that there can be no doubt that after the acceptance of resignation, in terms of Rule 26(1) the past service stands forfeited and that being so; for the purpose of deciding the question of entitlement of pension it is only to be held that the applicant had no service at all to be reckoned.

19. Following the decision of the Supreme Court in **Union of India v. Rakesh Kumar (2001) 4 SCC 309** and **Raj Kumar & Others v. Union of India (2006) 1 SCC 737** it was held by the Apex Court in **Union of India v. Madhu (2012) 2 KLT 558** that Rule 19 of the BSF Rule does not entitle any pensionary benefit on resignation of its personnel. It was held that the pensionary benefits are not ordinarily available on resignation under CCS Pension Rules since Rule 26 provides for forfeiture of service on resignation. Rule 49 of the CCS Pension Rules only deals with amount of pension and not with entitlement. The rule that deals with entitlement is

Rule 26(1). The intention of the Legislature is to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. The contention that Sub-Rule (1) and (2) of Rule 26 of CCS Pension Rules have limited operation and does not wipe out as quantified in Rule 49 is found to be devoid of any merit. Court cannot read something into a statutory provision which is plain and unambiguous.

20. It is trite that if a law is applicable equally to members of a well defined class it is not obnoxious and is not open to the charge of denial of equal protection on the ground that it has no application to other persons. Every classification is in some degree likely to produce some inequality and so mere production of inequality is not enough. The legislature is competent to exercise its discretion and make classification. Similarly a classification would be justified if it is not palpably arbitrary. See the Constitution Bench decision in ***Re Special Courts Bill, 1978*** - **AIR 1979 SC 478.** The difference which will warrant a reasonable classification need not be so great. What is required is that it must be real and substantial and must bear some just and reasonable relation to the object of the legislation. When a law is challenged on the ground of denial of equal protection, the question for determination by the Courts is not whether it has resulted in any inequality but whether there is some difference which balances a just and reasonable relation to the object of legislation. Mere differentiation or

inequality of treatment does not per se amount to discrimination within the "inhibition of the equal protection clause" contained in Article 14 of the Constitution.

21. It is vehemently argued by the respondents that pension is not a deferred pay. Government have not accepted the concept of pension being a deferred pay. There are certain underlying principle governing the grant of pension. An employee is not eligible for pension unless the qualifying service is served and is rendered in a post under the government and he is the holder of a substantive appointment at the time of retirement. There is intelligible differentia with respect to a person who voluntarily resigns from a post and a person who is removed from service on account of misconduct or who has to compulsorily retire, also because of similar reason. So far as a person who is compelled to retire or who is removed from service he (the employee) has no option and he has to accept the verdict of the disciplinary authority. But so far as an employee who resigns from a post is concerned, it is his volition, it is his voluntary act, nobody thrusts upon him such a course of action. When he voluntarily opts to resign from the post he cannot equate himself with a person who has to voluntarily retire or who is removed from service by the employer for the proved misconduct or for such other reasons. That itself is the intelligible differentia. A person who volunteers to abandon or forgo the right to get the retirement benefit and thus resigns cannot get himself compared with other employees who are to

retire on superannuation or who are to be compulsorily sent out or who has to be given compulsorily retirement for proved misconduct. Employees retired on superannuation or invalidation or rendered not less than 20 years of service and retired voluntarily are persons who are to be treated differently because of the factors mentioned above. Therefore, the contention repeatedly advanced by the applicants that there cannot be a classification within the class is palpably unsound. There is no such unreasonable classification. An employee who resigned voluntarily from service cannot be grouped with persons who are to retire on superannuation or who are removed from service or a person who voluntarily retires from service for the reasons stated above.

22. The applicants in all these cases are not retirees on superannuation or invalidation. The applicants tendered unconditional resignation and now contend after decades together that they are to be treated at par with persons who retired from service voluntarily or on superannuation. It is not a case where the applicant was discharged from service by the respondents. He himself tendered his resignation; may be due to his own domestic reasons. That will not salvage the position. It is not the individual likes or dislikes or reasons which compel him to resign that would count or weigh while interpreting the provision contained in Rule 26 (1) of CCS Pension Rules. The constitutionality is not to be judged on the difficulties if any experienced by a particular individual. The applicants

must be deemed to have been aware of the rule position at the time of applying for resignation. He has voluntarily forfeited his past service making him ineligible to get pension, because of the inhibition contained in Rule 26(1) of CCS (Pension) Rules. Had the applicants resigned after obtaining permission to take up employment in another department of government, past service would have been reckoned for counting the qualifying service for grant of pensionary benefit as claimed.

23. The respondents would contend that the government or governmental organization are not training institutes to allow the employees to resign from the post and leave the institution at their own sweet will and pleasure and then claim pensionary benefits. Pension is not intended to be given to such persons but only to persons who serve the institution as required under the rules for a prescribed period. It is vehemently argued by the learned counsel for the applicants that pension is not a bounty but is a right. That right is not available to a person who resigned from service but who had to retire on superannuation. Such comments had to be made by the Hon'ble Supreme Court because of the delay caused by the employer in disbursing the retirement benefits to employees who retired on superannuation. The facts dealt with in those cases are entirely different. Observations made in a judgment cannot be torn out of context and used to misinterpret the provision or to fortify the submission that sub-rule (1) of Rule 26 of CCS (Pension) Rules is violative of Article 14 of the

Constitution. Except the repeated oral submission made by the learned counsel for the applicants, nothing could be substantiated as to what is the inequality clause that would be available to be urged by the applicants. Employees who voluntarily resign from service are grouped together and they are denied the benefit of pension for the reasons already stated. It was the voluntary act which invited the operation of the rule. It is inconceivable how persons who voluntarily opt to resign can get themselves compared with other employees who retire on superannuation or who had to be compulsorily retired or removed from service due to departmental enquiries.

24. It is also worthwhile to note that the applicant in TA 12/2015 had two rounds of litigation unsuccessfully and now he comes forward with a plea that Rule 26(1) is unconstitutional. Technically it may be correct that in the earlier round of litigations he did not raise the question of unconstitutionality of the provision but still the fact remains that he had fought unsuccessfully in the two rounds of litigations earlier. The Central Pay Commission which is an expert body had examined several times as to whether terminal benefits are to be given to employees on resignation but it was found that resignation from service or post entails forfeiture of past service and as such claim for pension cannot be allowed. It is for the government which is a competent body to decide whether the employee resigns from service is to be given pension or gratuity. The applicant cannot compare himself with the cases under Rule 41 of CCS (Pension) Rules

which deals with the grant of compassionate allowance since as stated earlier in those cases the volition of the employee has no role. At the risk of repetition, it has to be said that an employee who resigns voluntarily knowing fully the consequences of the same cannot turn around and contend that he is entitled to get pension. It is also worthwhile to note that Rule relating to the grant of pension has been in existence since 1972. Nobody did question the constitutionality of the provision for all these four decades. Simply because now an employee after 40 years thinks that the provision can be challenged by raising a plea of unconstitutionality alleging violation of Article 14 of the Constitution, the Court or the Tribunal cannot simply swallow such pleas, for, it will amount to unsettling the settled law which had been in existence for nearly four decades. It is not even necessary to go into that aspect at all since we have no hesitation to hold that an employee who resigns from service cannot get himself compared with other employees. So the contention that there is inequality or violation of Article 14 is totally bereft of any merit.

25. It is contented by the respondents that the concept of inequality among all employees is physically impossible to achieve. Equality is a concept implying absence of any special privilege by reason of birth, creed etc, in favour of any individual. It is beyond any cavil of doubt that equality before law means equality among equals and not unequals. Law should be equal and should be equally administered and like should be treated alike.

An employee who voluntarily resigns from the post cannot get himself equated with other employee who retires on superannuation or who has been removed from service, etc. True that arbitrariness and unreasonableness are antithetical to equality but with respect to the issue involved in this case, there is no arbitrariness or unreasonableness or irrationality in the decision taken by the respondents. That a person who voluntarily resigns forfeits his past service, is the fundamental difference between other groups or class of employees. When the applicant cannot compare himself as equal to the other class of employees as stated above, the arguments vehemently advanced on behalf of the applicant that there is inequality is rather moonshine and irrational. It is totally unfounded, illogical and unreasonable.

26. The presumption is always in favour of the constitutionality of enactment. It must be presumed that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest and its discrimination are based on adequate grounds. See also the decision in ***R.K. Garg and others Vs. Union of India and others -- AIR 1981 SC 2138***. A legislation cannot be struck down as discriminatory if any state of facts may reasonably be conceived to justify it. So far as the case on hand is cornered, what have been delineated earlier would certainly justify the contention that there is intelligible differentia between two classes. The burden of showing that a classification rests upon an arbitrary and not reasonable basis or discrimination apparent is

manifestly upon the person who impeaches the law on ground of violation of the guarantee of equal protection. Though repeated submission is made that there is violation of Article 14, nothing tangible could be seen to hold that there is violation of the doctrine of equality enshrined in Article 14. There is also nothing to show that the policy of the government is manifestly arbitrary or wholly unreasonable so as to hold that it is violative of Article 14.

27. The legislature understands and correctly appreciates the needs of its own people, its laws are directed to problems made manifest by experience and its discrimination are based on adequate grounds. The presumption of constitutionality is indeed so strong that in order to sustain it, the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation. It was also held that the legislation should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrine or doctrinaire or strait jacket formula. It was also held that the court should feel more inclined to give judicial deference to legislative judgment. The court must always remember that legislation is directed to practical problems. The courts cannot substitute their social and economic beliefs for the judgment of the legislative bodies. There is no plea that there was impermissible delegation of legislative power so far as the

enactment of Rule 26 (1) of CCS (Pension) Rules is concerned. Nor is it a case where the authority concerned was vested with uncanalised, unbridled or unguided power or discretion so as to contend that there is a *Carte Blanche* to discriminate. Rule 26 (1) is uniformly applicable to all employees mentioned therein and it is not a case where one individual was discriminated against. There is no case for the applicants that the pronouncement of the rule suffers from the vice of incompetency or jurisdictional error. The only contention is that employees who voluntarily resign should be treated like other employees who are offered voluntary retirement or who retire on superannuation. The distinguishing factors highlighted in the various decisions would scuttle the plea raised by the applicants.

28. The decisions in ***Varghese Vs. State of Kerala- 2014 (1) KLT 1077*** which was initially relied upon by the applicant was actually reversed by the Division Bench in Writ Appeal No. 949/20154 in ***State of Kerala Vs. Varghese -. 2016(1) KLT 175.*** Rule 29(a) of Kerala Service Rules Part III which was earlier declared as unconstitutional by the Single Bench in Varghese Vs. State of Kerala was set aside and the validity of the aforesaid rule was upheld by the Division Bench. As stated earlier Rule 29(a) of K.S.R is exactly identical to Rue 26(1) of CCS (Pension) Rules. It was held by the Division Bench of the Kerala High Court in ***Chandrasenan v. State of Kerala (1999) 3 KLT 357,*** while dealing with Rule 29 of Part III of

Kerala Service Rules which is identical to Rule 26(1) of CCS (Pension Rules) that denial of benefits linked with and relatable to past service to a public servant, whose conduct and service lead to his removal or dismissal from service or if he resigns from service is neither unreasonable nor arbitrary. It was held that the said rule on the face of it is not ultravires the Constitution of India or the Kerala Public Services Act, 1968. Rule 29 of Part III of KSR which provides that the resignation, dismissal or removal entails forfeiture of past service is one, by which any benefit linked with and relatable to past service is automatically denied. The same is the position with respect to Rule 26 (1) of CCS Pension Rules as well. It was noted by the Division Bench in ***Varghese's case*** that even earlier in ***Mohammed Vs State of Kerala*** – 2007(3) KLT 605 it was held:

> "4. Learned counsel for the petitioner, at the outset, stated that the challenge to the vires of R. 29 in Part III K.S.R. is not pressed. That apart, R. 29 of part of Part III K.S.R which provides that resignation, dismissal or removal entails forfeiture of past service, is one, by which any benefit linked with and relatable to past service is automatically denied. It has been so held by the Division Bench of this Court in *Chandrasenan v. State of Kerala* (1999 (3) KLT 357). The denial of benefits linked with and relatable to past service to a public servant, whose conduct and service lead to his removal or dismissal from service of if he resigns from service is neither unreasonable nor arbitrary. The said Rule, on the face of it, is not *ultra vires* Constitution of India or the Kerala Public Services Act, 1968. "

In Paragraph 9 of the aforesaid decision in Varghese's case cited supra it was noticed by the Division Bench that a similar provision is incorporated in the CCS (Pension) Rules vide Rule 26 which provides that resignation from a service or post entails forfeiture of past service. It was also noted

that this rule was considered by the Hon'ble Supreme Court in ***Union of India and others Vs. Baj Nandan Singh -(2005) 8 SCC 325*** and the order denying pension to a person who resigned from service was upheld by the Apex Court. Further it was also noticed by the Division Bench that similar rule has been incorporated in the pension regulation framed by the Reserve Bank of India vide regulation 18, which provides that resignation or dismissal or termination of an employee from service shall entail forfeiture of his entire past service and consequently, shall not be qualified for pension. After quoting Rule 26 (1) & (2) of CCS (Pension) Rules, it was held by the apex court in ***Baj Nandan Singh*** case:

> *"It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute is the determinative factor of legislative intent."*

Again it was held in very same judgment

> *9. In **D.R. Venkatachalam v. Dy. Transport Commissioner – AIR 1977 SC 842** it was observed that courts must avoid the danger of a priori determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation."*
>
> *10. The above position was highlighted by this Court in **Maulavi Hussein Haji Abraham Umarji Vs. State of***

Gujarat – (2004) 6 SCC 672.

The Division Bench has also considered a judgment in ***Ghanashyam Das Relhan Vs. State of Haryana – 2009 (14) SCC 506*** where a similar clause contained in R.4.19 of State Service Rules was considered by the Apex Court and an order declining of pension to a person who resigned from service was upheld. Another decision of the Apex Court in ***Union of India vs, Madhu – 2012 (2) KLT 558 (SC)*** rendered in the context of Rule 19 of BSF Rules was also relied on. There, as per that rule pensionary benefits were not admissible on resignation; the Apex Court held that such employees who resigned from service are not eligible for pensionary benefits. Another single Bench judgment decision in ***Prabhakran N.T. Vs. Additional Secretary to Government, Cooperative (A)(Department & Others – 2009(2) KHC 165*** was also referred to. Therefore, it can be seen that in ever so many cases the Hon'ble Supreme Court had, applying Rule 26(1) or similar service rules had upheld the decision declining pension to the employees, who had resigned from service.

29. It is argued by the learned counsel for the applicants that in all those cases the constitutionality as such was not challenged, and so those decisions cannot preclude the applicants from challenging the constitutionality of the provisions. It was specifically held that CCS (Pension) Rules do not provide that a person who has resigned from service before completing 20 years service would be entitled to the pensionary

benefits. Rule 49 only prescribes the procedure for calculation and quantification of pension amount and not minimum qualifying service.

30. In ***Madhu's*** case (supra) the applicant therein had resigned from the BSF service immediately after completion of ten years service and so it was held by the Supreme Court that the claimants (the persons who claimed pension) are not entitled to any pensionary benefits.

31. While considering the claim for pension and other retiral benefits under the Reserve Bank of India Pension Regulation 1990, the Hon'ble Supreme Court in ***Reserve Bank of India and another Vs. Cicil Dennis Solomon and another – (2004) 9 SCC 461*** held:

> *"10. In service jurisprudence, the expressions superannuation, voluntary retirement, compulsory retirement and resignation convey different connotations. Voluntary retirement and resignation involve voluntary acts on the part of the employee to leave service. Though both involve voluntary acts, they operate differently. One of the basic distinctions is that in case of resignation it can be tendered at any time; but in the case of voluntary retirement, it can only be sought for after rendering prescribed period of qualifying service. Other fundamental distinction is that in case of the former, normally retiral benefits are denied but in case of the latter, same is not denied. In case of the former, permission or notice is not mandated, while in case of the latter, permission of the concerned employer is a requisite condition. Though resignation is a bilateral concept, and becomes effective on acceptance by the competent authority, yet the general rule can be displaced by express provisions to the contrary. ....."*

The principle enunciated therein are applicable to the facts of this case as well.

32. In ***Uco Bank and others Vs. Sanwar Mal and others -- (2004) 4 SCC 412*** Rule 22 of Uco Bank Employees (Pension) Regulations 1995 to

the extent it provides for forfeiture of past service and disqualifying those who have resigned for pensionary benefits, was challenged contending that it is arbitrary and unreasonable classification and repugnant to Art.14 of the Constitution. That regulation was attacked contending that it is contrary to the objects of the Pension scheme embodied in the Regulation, that employees who have resigned after completing qualifying service contemplated by Regulation 14 were entitled to opt for pension as they were in a position to bring in their contribution of retrial benefits to their credit for having worked for a minimum service of ten years in the Bank and that the employees therein had worked for more than ten years and it was then they resigned and therefore, they fulfilled the qualifying service contemplated by Regulation 14 and consequently they were entitled to the benefit of the pension scheme. Rule 22 therein is in *pari materia* with Rule 26 (1) of CCS (Pension) Rules. The arguments advanced on behalf of the employees as stated above are exactly the argument advanced on behalf of the applicants in these cases as well. There the appeals were filed by the Uco Bank, Oriental Bank etc. It was held by the Hon'ble Supreme Court in the above case:

> *"We find merit in these appeals. The words "resignation" and "retirement" carry different meanings in common parlance. An employee can resign at any point of time, even on the second day of his appointment but in the case of retirement he retires only after attaining the age of superannuation or in the case of voluntary retirement on completion of qualifying service. The effect of resignation and retirement to the extent that there is severance of employment but in service jurisprudence both the*

expressions are understood differently. Under the Regulations, the expressions "resignation" and "retirement" have been employed for different purpose and carry different meanings. The pension scheme herein is based on actuarial calculation; it is a self-financing scheme, which does not depend upon budgetary support and consequently it constitutes a complete code by itself. The scheme essentially covers retirees as the credit balance to their provident fund account is larger as compared to employees who resigned from service. Moreover, resignation brings about complete cessation of master and servant relationship whereas voluntary retirement maintains the relationship for the purposes of grant of retiral benefits, in view of the past service. Similarly, acceptance of resignation is dependent upon discretion of the employer whereas retirement is completion of service in terms of regulations/rules framed by the bank. Resignation can be tendered irrespective of the length of service whereas in the case of voluntary retirement, the employee has to complete qualifying service for retiral benefits. Further, there are different yardsticks and criteria for submitting resignation vis-a-vis voluntary retirement and acceptance thereof. Since the pension regulations disqualify an employee, who has resigned, from claiming pension the respondent cannot claim membership of the fund. In our view, regulation 22 provides for disqualification of employees who have resigned from service and for those who have been dismissed or removed from service. Hence, we do not find any merit in the arguments advanced on behalf of the respondent that regulation 22 makes an arbitrary and unreasonable classification repugnant to Article 14 of the Constitution by keeping out such class of employees. The view we have taken is supported by the judgment of this Court in the case of Reserve Bank of India and Anr. v. Cecil Dennis Solomon and Anr., reported in (2003) 10 Scale 449." (emphasis supplied)

The underlined portion would give a complete answer to the argument advanced on behalf of the applicants and would scuttle the plea so raised by them. The contention raised by the employees therein that the provision which disentitles an employee who resigned from service from claiming retrial benefit is violative of Article 14 of the Constitution was turned down and as such applying the same principle the plea raised by the counsel appearing for the applicants in these case must also fall to the ground.

33. The doctrine of *stare decisis* is expressed in the maxim *yet non*

quieta movera which means to stand by decisions and not to disturb what is settled. Those things which have been so often adjudged ought to rest in peace. The underlying logic of the said doctrine is to maintain consistency and avoid uncertainty. The guiding philosophy is that a view which held the field for a long time should not be disturbed only because another view is possible. Here another view is not possible at all. The rationale of these rules is needed for continuity, certainty and predictability in the administration of justice. In all the judgments cited supra the validity of the provisions/rule 26(1) of CCS (Pension) Rules or rule akin to the same was upheld by the Hon'ble Supreme Court.

34 In service jurisprudence the expressions superannuations, voluntary retirement, compulsory retirement and resignation convey different connotations. Voluntary retirement and resignation involve voluntary acts on the part of the employee to leave service. Though both involve voluntary acts, they operate differently. One of the basic distinctions is that in case of resignation, it can be tendered at any time, but in the case of voluntary retirement it can only be exercised after rendering prescribed period of qualifying service. Other fundamental distinction is that in the case of the former normally retiral benefits are denied but in the case of the latter the same is not denied. In the case of the former, permission or notice is not mandated while in case of the latter, permission of the concerned employer is a requisite condition. Though resignation is a

bilateral concept and becomes effective on acceptance by the competent authority, yet the general rule can be displaced by express provisions to the contrary.

35. In P***unjab National Bank Vs. P.K.Mittal - AIR 1989 SC 1083*** it was held by the apex court that the resignation would automatically take effect from the date specified in the notice as there was no provision for any acceptance or rejection of the resignation by the employer. Voluntary retirement is a condition of service crated by statutory provisions whereas resignation is an implied term of any employer/employee relationship. When distinctions are made with respect to the expressions compulsory retirement, voluntary retirement, retirement on superannuation and resignation all those expression cannot be given the same meaning nor do they operate in the same field. The conditions stipulated are different and as such an employee who resigns from service cannot equate himself with an employee who retires on superannuation or who voluntarily retired or who is removed from service. See also the decision of the Hon'ble Supreme Court in ***Civil Appeal No.9547/2003 and Appeal (Civil) No. 9549 of 2003 judgment dated 4.12.2003.***

36. In the light of the authoritative pronouncements of the Supreme Court, the plea vehemently advanced on behalf of the applicants that Rule 26 (1) of the CCS (Pension) Rules is ultra vires and unconstitutional is found to be devoid of any merit. Since the applicants in all these cases had

resigned and since the claim depends only on the plea of the so called unconstitutionality of Rule 26 (1) of CCS (Pension) Rules and as the same has been found against the applicants, the T.A and O.As are liable to fail.

37. Ex-consequenti the applications being sans merit, deserve to be dismissed. The T.A. and O.As are dismissed. No order as to costs.

(Mrs.P. Gopinath)
Administrative Member

(N. K. Balakrishnan)
Judicial Member

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