

**CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW
BENCH, LUCKNOW**

**Original Application No.252/2009
This the 14th day of December, 2011.**

**Hon'ble Mr. Justice Alok Kumar Singh, Member (J)
Hon'ble Mr. S.P. Singh, Member (A)**

Raj Kumar, aged about 52 years, son of Late Shri Magan Ram, resident of -592 Ka/139, Bengali Tola, Kahrika, Telibagh, Lucknow.

...Applicants.

By Advocate: Sri Praveen Kumar.

Versus.

Union of India, through

1. The Secretary, Ministry of Statistics & Programme Implementation, National Sample Survey Organization (Field Operation Division), New Delhi.
2. The Dy./ Upper Director General, National Sample Survey Organisation (field Operation Division), Uttarakhand Region, 5 Indira Gandhi Marg, Niranjanpur, Majra, Dehradun.
3. The Sr. Superintendent/Head of Office, National Sample Survey Organisation (field Operation Division), Uttarakhand Region, 5 Indira Gandhi Marg, Niranjanpur, Majra, Dehradun.

.... Respondents.

By Advocate: Sri K.K. Shukla.

ORDER (dictated in open court)

By Hon'ble Mr. Justice Alok Kumar Singh, Member (J)

This O.A. was filed for the following relief's:-

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“(a). To quash the order dated 06.05.2009 contained as Annexure No.A-1 to this OA with all consequential benefits.

(b). To take back and allow the applicant to continue as such without any sort of interruption and pay him salary regularly.

(c). Any other relief, which this Hon’ble Tribunal may deem fit, just and proper under the circumstances of the case, may also be passed.

(d). Cost of the present case.”

2. The case of the applicant is that he was mentally disturb due to which his treatment was going on at Mental Hospital i.e. Nur Manzil Psychiatric Center, Lucknow (Annexure-2). He therefore submitted an application dated 20.04.2009 for voluntary retirement but with condition that consent of his wife may also be taken care of (Annexure-3). Thereafter, without issuing any notice as required under the rules, the respondent no.2 issued an order dated 06.05.2009 accepting the application without following the condition stipulated therein. Since the applicant was in major depression, the applicant’s wife has also sent a representation but no decision was taken. On recovery, the applicant personally visited the respondent no.2 on 25.05.2009 and handed over a representation alongwith medical certificate (Annexure-6). He was waiting for a suitable and positive response but he was shocked to receive the letter dated 21.05.2009 on 29.05.2009 by which, the respondents have asked to the applicant to complete the formalities for payment of settlement dues. At the time of submission of application, seeking voluntary retirement there was no Joint Director posted as Dehradun. Therefore the competent authority was Joint Director, Lucknow. His application ought to have been forwarded

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to the Joint Director, Lucknow being the Cadre Controlling Authority and competent authority but Senior Superintendent has accepted the application in gross violation of rules.

3. The O.A. has been contested by filing a detailed Counter Affidavit, saying that representation made by the applicant was considered and decision taken thereon was conveyed to the applicant and there is no illegality in passing the order dated 06.05.2009 and 21.05.2009 (Annexure-1 and 4).

4. Thereafter the amendment was incorporated on 24.12.2009 in terms of order dated 3.12.2009. The copy of amended O.A. was concededly supplied on 03.02.2011. But no supplementary counter affidavit has been filed.

5. Heard the learned counsel for the parties and perused the material on record.

6. At the outset, it may be mentioned that copies of O.M.s dated 10.06.2009 and 22.02.2010 have been brought on record by means of supplementary affidavit dated 19.04.2011 after serving it's copy to the other side on the same date. Its extract are as under:-

“No.A-11019/2/2009-E.III
Government of India
Ministry of Statistics and Programme Implementation
National Sample Survey Organisation
(Field Operation Division)

East Block No.6, Level4-7,
R.K. Puram, New Delhi-110066
Dated 10.06.2009.

OFFICE MEMORANDUM

Subject:- Voluntary Retirement in respect of Shri Raj Kumar, Daftry, Regional Office, Dehradun-regarding.



With reference to his O.M. No. वी० एन० (दाफ्री)/उत्तरा/2006-2007, dated 06.05.2009 on the subject cited above, it is stated that Shri Raj Kumar, Daftry belongs to U.P. Cadre controlled by Regional Office, Lucknow and he was continuing at Regional Office, Dehradun due to his transfer order by FOD, Hqrs. On administrative grounds. The order issued by him is not appropriate as Regional Office, Dehradun is not a Cadre Controlling Authority/Appointing Authority in respect of Shri Raj Kumar, Daftry, who belongs to Cadre Controlling Authority, Lucknow.

Head of Office, NSSO (FOD), Dehradun is hereby directed to forward all the papers relating to voluntary retirement of Shri Raj Kumar, Daftry, Dehradun to the Cadre Controlling Authority i.e. Regional Office, Lucknow to take further necessary action under intimation to this Division.

(C. MURALI KRISHNA)

SENIOR ADMINISTRATIVE OFFICER

To,

The Head of Office,
N.S.S.O. (F.O.D.),
Regional Office,
Dehradun.

Copy to: Deputy Director, Regional Office, Lucknow for information and necessary action being Cadre Controlling Authority of the State.

(C. MURALI KRISHNA)

SENIOR ADMINISTRATIVE OFFICER

“No.A-11019/1/2009-Estt.III
Government of India
Ministry of Statistics and Programme Implementation
National Sample Survey Organisation
(Field Operation Division)

East Block No.6, Level 4-7,
R.K. Puram, New Delhi-110066
Dated 22.02.2010.

OFFICE MEMORANDUM

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Subject:- Acceptance or otherwise of the Voluntary Retirement in respect of Shri Raj Kumar, Daftry, Regional Office, Dehradun-regarding.

Joint Director and Cadre Controlling Authority, NSSO (FOD), Regional Office, Lucknow may please refer to his letter No.C-18013 /2/2009 /UPC /CC/Dehradun dated 05.02.2010 on the subject noted above, it is observed that Cadre Controlling Authority, Lucknow has proposed acceptance of voluntary retirement of Shri Raj Kumar, Daftry w.e.f. 06.05.2009 as per his notice dated 21.04.2009.

2. Shri Raj Kumar, Daftry belongs to UP Cadre thus, being Competent Authority in this case, Cadre Controlling Authority, Lucknow should look into the matter of his application dated 21.04.2009 requesting for voluntary retirement and also his subsequent application dated 24.05.2009 withdrawing his application for voluntary retirement. In case his withdrawal of voluntary resignation is within the prescribed time limit under the Rule-48-A and in case employee has not requested for curtailment of period of notice under Rule-48A (3-A), his request dated 21.04.2009 cannot be considered in isolation.

3. Being Competent Authority, it is duty of the Cadre Controlling Authority to decide the issue in light of the Government of India's instructions on the subject. Cadre Controlling Authority is, therefore advised to take appropriate action as deemed fit under intimation to this Hqrs. Maintaining harmony with the development of the case filed by Shri Raj Kumar in CAT, Allahabad and issued an appropriate order.

(GHAN SHYAM)

DIRECTOR (ADMN.)

To,

Joint Director and Cadre Controlling Authority,
NSS(FOD),
Regional Office,
Lucknow.

Copy to:

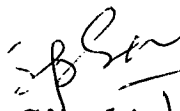
Court Case Section, NSSO (FOD), Hqrs. Office, New
Delhi.

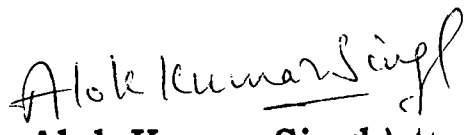
(GHAN SHYAM)

f12 DIRECTOR (ADMN.)

7. From the perusal of the aforesaid two O.Ms., it transpires that matter is still pending with the respondents and they are supposed to decide the matter, in accordance with law keeping in view the above O.Ms. Therefore, we are not inclined to advert to any other point pertaining to the merit of this case.

8. In view of the above, this O.A. is finally disposed of with the direction to the respondents to pass an appropriate speaking order in accordance with law expeditiously say within a period of two months from today keeping in view the aforesaid two O.Ms. dated 10.06.2009 and 22.02.2010. It is also provided that the impugned order shall be kept in abeyance till the final decision is taken by the respondents in the aforesaid manner. No order as to costs.


(S.P. Singh) 14.12.11
Member (A)


(Justice Alok Kumar Singh) 14.12.11
Member (J)

Amit/-