

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

OPEN COURT / PRE DELIVERY JUDGMENT IN OA 534, 89

Hon'ble Vice Chairman / ~~Member (J)~~ / Member (A)

may kindly see the above Judgment for
approval / signature.

V.C. / Member (J) / Member (A) (K/S) 4/8/96

✓ *yes*
Hon'ble Vice Chairman

Hon'ble Member (J)

Hon'ble Member (A) (K/S)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 534/89.

Transfer Application No:

DATE OF DECISION: 5/8/94

Shri Arvind Parshuram Joag, Petitioner

In Person. Advocate for the Petitioners

Versus

Union Of India & Others. Respondent

Shri P. M. Pradhan, Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri Justice M. S. Deshpande, Vice Chairman.

The Hon'ble Shri V. Ramakrishnan, Member (A).

1. To be referred to the Reporter or not ? *Y*
2. Whether it needs to be circulated to other Benches of the Tribunal ? *Ma*

V. Ramakrishnan
(V. RAMAKRISHNAN)
MEMBER (A).

os*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. NO.: 534/89.

Shri Arvind Parshuram Joag ... Applicant

Versus

Union Of India & Others ... Respondents.

CORAM : Hon'ble Vice Chairman Shri Justice M.S. Deshpande.
Hon'ble Member (A) Shri V. Ramakrishnan.

APPEARANCE

1. Applicant in Person.
2. Shri P. M. Pradhan,
Counsel for the Respondents.

JUDGEMENT

DATED : 5-8-99

¶ Per. V. Ramakrishnan, Member (A) ¶.

1. The applicant Shri A. P. Joag formerly a Member of the Indian Statistical Service, has challenged the order of the Department of Statistics in the Ministry Of Planning, accepting his notice of retirement on the ground that the retirement was not voluntary but forced upon him by the Government.

2. The facts of the case are mentioned below :
The applicant joined the Central Government Service on 01.11.1962 as Statistical Officer in the Southern Command Headquarters, Ministry Of Defence. Prior to that, he rendered some service in the State Of Maharashtra. He was inducted in Grade IV of the Indian Statistical Service (I.S.S. for short) on 20.08.1968 and was promoted to Grade-III of this service on 21.06.1972 and appointed to the post of Senior Research Officer in the Central Water and Power Research Station, Pune, (C.W.P.R.S. for short). Subsequently in 1981, he was transferred and posted as a

Deputy Director in the Office of the Textile Commissioner, Bombay, as the Members of the I.S.S. are liable to be transferred to various Departments according to need. Shri Joag states that he had rendered outstanding service and has published a number of research papers. He alleged that during 1977-78 or so, Shri Saxena, the Director, C.W.P.R.S., wanted the research papers written by the applicant and other Scientists should be published in ^{Shri Saxena's} name and that as the official did not accede to this request, the Director threatened to ruin the service career of the applicant. The applicant states all these to substantiate his case that certain adverse entries in his C.R. for the year 1980-81 were recorded on account of the grudge the Director had against him. When he was serving in the Textile Commissioner's Office, certain departmental proceedings were initiated against him and a Charge Sheet was issued on 11.06.1984. Before completion of this enquiry, Government took a decision to compulsorily retire the applicant under FR 56 (j). Shri Joag challenged before the Tribunal in O.A. No. 359/86, the order-cum-notice which was received by him on 16.07.1987 under which he stood retired w.e.f. 16.07.1987. The Tribunal by its order dated 26.08.1987 quashed the order-cum-notice under FR 56(j) and directed the Government to reinstate him in service with all consequential benefits. After this Judgement was pronounced, the Counsel for the respondents submitted that the Department intended to approach the Supreme Court against the judgement and sought for a stay. The Tribunal ordered that operation of the judgement was stayed upto 30.09.1987. The Department, however, eventually decided to implement the Tribunal's judgement dated 26.08.1987 and issued orders on 23.09.1987. This order stated that "the applicant continues to be in Government service as a member of Grade-III of ISS without any break from 17.10.1986 and that he was posted

as Deputy Director in the Survey Design and Research Division of the National Sample Survey Organisation, Department Of Statistics at Calcutta against an existing vacancy." Meanwhile, the applicant wrote a letter dated 04.09.1987 to the Secretary, Department Of Statistics, where he requested inter-alia that the Department may kindly order his transfer to Pune on compassionate and humanitarian grounds as his wife had suffered a disastrous stroke of paralysis with a clot in the brain on 29.05.1985 at Pune and continued to be bed-ridden at Pune. In that letter, he had also referred to his earlier application dated 28.04.1986, wherein he had sought for transfer on deputation to the National Informatics Centre (Western Region) Pune and requested that the same may be forwarded to the Department Of Electronics and the Director General, National Informatics Centre, (N.I.C.), New-Delhi for necessary action. The Department by their letter dated 23.09.1987 informed that the vacancy in National Informatics Centre was already filled up and that it would not be possible for them to send him on deputation to that office. It was also mentioned that as there was no vacancy available in Bombay in Grade-III of ISS, it had been decided to post the applicant as Deputy Director in the Survey Design and Research Division, N.S.S.D., Department Of Statistics, Calcutta. The applicant on 2.10.1987 submitted another representation to the Secretary, Department Of Statistics. In this letter, he thanked him for exploring the possibility of posting him on deputation to N.I.C. Pune and requested that he should be posted in Pune and suggested various methods by which this could be done. He also submitted a formal application for Study Leave by his letter dated 06.10.1987. The Department considered his representations but could not accede to them.

The applicant was informed through a letter dated 15.10.1987 that his representations dated 02.10.1987 and 06.10.1987 could not be acceded to and that he should join at Calcutta on 29.10.1987 and that if he failed to do so, the period will be treated as dies non. The applicant accordingly reported for duty in Calcutta on 29.10.1987. He worked there for sometime but took Casual Leave for a few days. He rejoined at Calcutta on 17.12.1987 but proceeded to Pune applying for Earned Leave soon thereafter. Meanwhile, he continued to make representations seeking a posting in Pune and seems to have approached Shri V. N. Gadgil, Member, Lok Sabha, who strongly recommended his case to the Minister Planning. Shri V. M. Dandekar of Indian School of Political Economy had earlier sent a letter to the Director, N.S.S.O. with a request to consider posting the applicant in Pune. Shri Joag also sent a letter dated 09.12.1987 to the Director Of Institute Of Armaments, Pune and another letter dated 11.12.1987 addressed to the Director General, N.I.C. He also submitted, what he called an Emergency Petition dated 23.12.1987 addressed to the Union Minister of Planning to kindly approve his transfer on deputation to I.A.T., Pune on extreme compassionate and humanitarian grounds which he sent through proper channel. Before getting a reply to these representations and when he was on earned leave at Pune, he sent a letter dated 01.01.1988 to the Secretary, Department Of Statistics seeking voluntary retirement from the Central Government Service where he highlighted the fact that he could not leave his wife who was bed-ridden in Pune and could not work in Calcutta. He had brought out in this letter that he had completed the age of 55 years on 16.12.1987 and had also completed 30 years of qualifying service since 01.07.1987 and as he had fulfilled the requisite conditions, he should be

allowed to retire voluntarily under Rule 48 of CCS (Pension) Rules. He also specifically requested that as the state of his wife's health had further deteriorated and as he was on earned leave at Pune, to look after her critical health, Government should accept notice of less than three months on compassionate grounds and he might be permitted to retire w.e.f. 11.01.1988 (F.N). The N.S.S. Organisation, Calcutta, forwarded this notice to the Department Of Statistics, New Delhi, recommending acceptance of his request for curtailment of notice period. The Department of Statistics, the Cadre Controlling Authority, acted on the notice for retirement and acceded to his request for curtailment of the period of notice. A notification dated 15.02.1988 was issued to the effect that the applicant was allowed to retire voluntarily from I.S.S. with effect from the forenoon of 11.01.1988. This was done after receiving the report of relinquishment of charge from Shri Joag dated 11.01.1988 and necessary action was also taken to process and release the retirement benefits due to him after getting the requisite pension forms duly completed.

3. As Shri Joag was born on 16.12.1932, his normal date of superannuation would have been 31.12.1990.

4. Shri Joag had filed an application dated 31.07.1989 before the Tribunal where he contended that his retirement w.e.f. 11.01.1988 was forced upon him by the Department Of Statistics in the Ministry Of Planning and that the relevant orders in this regard and subsequent orders granting him various retirement dues should be quashed with a direction that he should be reinstated in service in Pune and that the period from 11.01.1988 onwards should be treated as on duty. He also seeks a direction that the order transferring him to Calcutta should be quashed, as it was done with a

view to circumventing the judgement of this Tribunal dated 26.08.1987. He further claims that he is entitled to interest for the period from 01.10.1987 to 12.09.1988 on the arrears of salary for the period from the date of his compulsory retirement in October 1986 till 30.09.1987 which is the date when he was ordered to be reinstated by the Tribunal. He bases this demand on the ground that the department failed to implement in time the directions of the Tribunal. He has also prayed that the disciplinary charges instituted against him and also the adverse remarks in his Confidential Reports for 1982-83, 1983-84 and 1984-85 should be quashed.

5. Shri Joag had filed a M.P. on 18.08.1989 seeking an Interim Order for reinstating him in Service at Pune with full back salary, etc. The Tribunal held that he was not entitled to the Interim Relief sought for.

6. Shri Joag filed another M.P. on 20.04.1990 seeking leave to make additional prayers challenging his transfer in 1981 from Pune to Bombay and to quash the adverse remarks recorded by Shri Saxena, Director, C.W.P.R.S., in 1983 in his C.R. for 1980-81. He also wanted action to be initiated against the Secretary, Department Of Statistics, for not restoring the status-quo as on 17.12.1986 and sought exemplary cost. He also claimed that he should be given promotion and clarified that the same related to promotions due in 1984, 1986 and in 1990. The Tribunal observed that so far as his promotion of 1990 is concerned, the same could be considered depending upon the disposal of the present application O.A. No. 534/1989 but rejected the M.P. in respect of all other additional prayers.

7. As to the relief for quashing the disciplinary proceedings instituted and also the adverse remarks in his C.R.s for certain years, it is relevant to note that in his earlier application challenging his compulsory retirement in 1986 vide O.A. No. 359/86, he had sought the same prayers. However, during the course of argument, the learned counsel for Shri Joag, restricted his submissions only with respect to the question of validity of the order of compulsory retirement. It is also pertinent to mention that the department while acting on his request for voluntary retirement vide his letter dated 01.01.1988, had gone into the pendency of the departmental proceedings and decided that the same should be dropped. As such, we do not propose to consider this part of the prayer. As regards his claim for interest in respect of arrears of salary due to him for the period from 17.10.1986 to 30.09.1987, when he was ^{ordered to be} reinstated in service, we notice that he had not moved the Tribunal with a Contempt Petition or otherwise anytime after 30.09.1987 till 12.09.1988, when the arrears had been actually paid to him. We therefore reject this prayer also. Shri Joag wants us to quash the order dated 23.09.1987 posting him to Calcutta stating that it has been done with a view to force him to seek retirement. He also contends that this had circumvented the Tribunal's Order dated 26.08.1987. The directions of the Tribunal were to reinstate Shri Joag in service and did not deal with his posting to any particular station. Shri Joag has complied with this transfer order and reported for duty in Calcutta on 29.10.1987. His contention that the Tribunal's Order resulted in his continuing to be borne in the establishment of Textile Commissioner, Bombay and that it was necessary to formally relieve him from that post before making him join in Calcutta, is without merit. This prayer also therefore

cannot be entertained. What therefore remains to be considered is whether the retirement was not voluntary but was forced upon him by the Cadre Controlling Authority by not posting him at Pune and whether while taking action on his notice, the Department had acted improperly in violation of rules and the prescribed procedure.

8. We have heard Shri Joag in person and also Shri Pradhan, Learned Standing Counsel for the Respondents. We have also gone through the files of the Department Of Statistics, which are relevant for disposal of the present application.

9. The main grounds which Shri Joag has urged in support of his contention that acceptance of his notice is illegal are the following :-

(a) The notice dated 01.01.1988 by him was conditional. He contends that the letter had highlighted his desperation in having to remain away from his wife, who was seriously ill and it was occasioned by the persistent refusal of the department to concede to his request for transfer to Pune. According to him, his conditional retirement notice should not have been accepted by the department. He has also referred in this connection to the case of one Shri Tamboli, where the Ministry Of Defence had refused to accept the conditional notice of voluntary retirement. He argues that the Respondent No. 1 i.e. the Secretary, Department Of Statistics had suppressed his various appeals for transfer to Pune and communicated a grave mistake by accepting, what he calls, the Applicant's representation-cum-retirement notice dated 01.01.1988.

(b) The Secretary was in a great hurry to get rid of the applicant. Without even checking up with the concerned Audit Officer as to whether the Applicant was having the required qualifying service or not, the Secretary, straightaway accepted his notice and got the orders issued retiring him from service.

(c) The applicant states that he was not informed about the acceptance of his notice. The retirement therefore, could not be said to have taken effect.

(d) Shri Joag asserts that the notice was accepted by a person who was not competent to do so.

(e) He refers to what he regards as his victimisation by Shri P. C. Saxena, former Director, CWPRS, Pune, who had poisoned the minds of various authorities. This had resulted in adverse remarks in his Confidential rolls in the previous years and prompted the department to take action in 1986 to compulsorily retire him from service under FR 56(j) which was set aside by the Tribunal in August 1987.

(f) Shri Joag also contends that the department had not made any sincere efforts to accomodate his request for posting him in Pune. He had suggested in his representation dated 01.01.1988 a number of methods by which his request could be acceded to. The department did not take action on any of his suggestions. He also refers to the various efforts made by him to get a posting at Pune. The

then Dean and Director, Institute of Armament Technology, Pune, had sought for his service by his D.O. letter dated 13.06.1984. Besides his transfer on deputation to N.I.C. (National Informatics Centre), Western Region, Pune, was approved by the Additional Secretary, Department Of Electronics as per his D.O. letter dated 07.05.1986. The department adopted a vindictive attitude and did not process his request for transfer on deputation to I.A.T., Pune or to N.I.C., Pune, on the pretext of disciplinary proceedings pending against him.

10. The Respondent Department has refuted the various allegations of Shri Joag. They bring out that the Department Of Statistics is the Cadre Controlling Authority in respect of the Indian Statistical Service with effect from 17.10.1984. This authority is concerned with the centralised aspects of managing the service and all matters pertaining to training, career planning and manpower planning for the service. The day to day administrative matters relating to the members of the Service such as grant of leave, pay fixation, periodical evaluation of performance, discipline, etc. are the concern of the Ministry/Department/Office in which the Officer is for the time being posted. The creation, continuance, abolition of posts, though encadred in the service, are the concern of the Ministry/Department in which the posts function. In view of this, the officers who require postings have to be accomodated in vacancies available at that time and there is not much that the Department of Statistics as the Cadre Controlling Authority could do in this matter, as it has to function within the given frame work.

The Respondents further contend that the posting of the applicant on reinstatement of service in Calcutta was ordered after taking all reasonable and possible action to see whether he could be posted in Grade-III level at Pune or even at Bombay, whether in a cadre post or in a deputation post. His posting to Calcutta was necessitated as it was just not possible to accomodate him at Pune or at Bombay. The applicant could not be sent on deputation to N.I.C., Pune, as the Department Of Electronics had taken necessary action to fill up the vacancies at their Regional Centre, Pune and they regretted their inability to consider the case of Shri Joag. Shri Joag could not also be posted against the FOD post at Pune, as this was operated at Grade-IV level, whereas the applicant was a Grade-III Officer. The Respondents submit that they had not closed the issue of his transfer to Bombay or near about as and when a vacancy arose but Shri Joag's clear request for voluntary retirement by curtailing the notice period took precedence and foreclosed this.

11. The Respondents also deny the allegations that they had not followed the proper procedure while accepting the notice of retirement. They state that Shri Joag had submitted his Charge Relinquishment Report on 11.01.1988 and had also completed the pension papers which were sent to him and returned the same to the concerned authorities vide his letter dated 11.05.1988. It is therefore false to state that he came to know of his being voluntarily retired only on receipt of the letter dated 04.08.1988 sanctioning his encashment of leave. The Department further avers that Shri Joag's notice was considered carefully and was accepted by

the competent authority. Shri Joag had no doubt, highlighted his family problems and the difficulties he was facing, if he had to be away from his wife at Pune, while sending his notice for voluntary retirement. The department stated that this was no more than reiteration by Shri Joag of his family problems and it had nothing to do with any prejudice or bias on the part of the department. They also refer to sub-rule 1.A(a) of Rule 48 of the C.C.S (Pension) Rules where the Government Servant has to give reasons if he makes a request for curtailing the period of three months notice. Shri Joag's letter dated 01.01.1988 therefore, has to be viewed in the context that he had given reasons as to why he should be permitted to retire on 11.01.1988 without the Government insisting on the full notice period. The Respondents categorily deny any malice against Shri Joag. They had not in any way exerted pressure on Shri Joag to quit service. The fact that they dropped the disciplinary proceedings against Shri Joag before accepting the notice of retirement would show that they did not want to harass him in any manner. The department submits that his conduct subsequent to forwarding his notice of retirement as also the fact that he never protested against the order dated 15.02.1988 allowing him to retire voluntarily from service under Rule 48 of C.C.S. (Pension) Rules would clearly indicate that his filing an application before the Tribunal is an after-thought and seems to have been done in the fond hope that the issue would get prolonged allowing him to retire in normal course on 31.12.1990 so as to get the benefits of service retrospectively without actually being on duty.

12. We may first examine the allegations of Shri Joag that the Department had acted improperly in accepting his notice of retirement without adhering to the prescribed procedure laid down in this regard. Shri Joag argues that immediately on receipt of his letter dated 01.01.1988, the department communicated the acceptance of notice which was for less than three months, without consulting the Audit Officer. He refers to certain Finance Ministry's instructions, which required the authorities to consult the Audit Officers in such matters. He states that he joined the Central Government Service w.e.f. 01.11.1962, after putting in about five years service under the Government Of Maharashtra. He argues that the services under the Government Of Maharashtra would count only for the purpose of pension and not for the purpose of voluntary retirement. According to him, he had not put in 30 years of qualifying service, and he was not entitled to seek voluntary retirement. He contends that the department instead of waiting to verify the factual position in this regard, was in too much of hurry to get rid of him by accepting his notice.

13. We find from the records that on receipt of the notice, the department had examined the question as to whether he had the minimum required qualifying service. They held that if the services under the Government Of Maharashtra rendered for the period from 1957 to 1962 were to count as qualifying service, Shri Joag's request for voluntary retirement could be considered under Rule 48. In terms of this rule, the Government Servant has a right to retire from service so long as he is not under suspension, after giving three months notice. Permission of the Government is required only when the notice period is sought to be curtailed, as in the present case. The

department has referred to Rule 48 A, where the Government Servant can seek voluntary retirement after completing 20 years of qualifying service subject to the condition that such notice requires acceptance by the Appointing Authority. The respondents took the view that even in case the services under the State Government would not count as qualifying service, Shri Joag could still be permitted to retire under Rule 48 A of the CCS(Pension) Rules as he had undoubtedly put in more than 20 years of service under the Central Government. We are also unable to appreciate the distinction sought to be made by Shri Joag that his five years service under the State Government would count only for pension and not for the purpose of voluntary retirement. Rule 48 and 48 A of the C.C.S. (Pension) Rules which deal with voluntary retirement refer to "Qualifying Service" which has been defined as service rendered which shall be taken into account for the purpose of pension and gratuity admissible under the rules. We are informed that Shri Joag is now drawing full pension, which means that the service under the Government Of Maharashtra has also been taken as qualifying service. We may also mention that in para 3 of his notice, he refers to his completing 30 years qualifying service since 01.07.1987 and has sought for weightage of three years, so that the qualifying service would amount to 33 years, entitling him to full pension. This contention is, therefore, not tenable.

14. Shri Joag also alleges that his notice of retirement was not accepted by the Competent Authority. We find that he has addressed his notice dated 01.01.1988 to the Secretary, Department Of Statistics, through proper channel, who is the highest administrative

functionary of the Department Of Statistics, which is the Cadre controlling authority of I.S.S. The records also make it clear that this was duly processed by the Department. It was also spelt out in the noting in the file that as he was a Group 'A' Officer, the approval of the Minister was required and accordingly the Minister's approval was taken through the Secretary of the Department. As such, there is no substance in this submission also.

15. Shri Joag makes a grievance that the acceptance of his notice was not communicated to him. He implies that he came to know of it for the first time when he received the letter dated 04.08.1988, which sanctioned payment of cash equivalent of his leave on retirement. The respondents contend that this allegation is baseless. They refer to the charge relinquishment report dated 11.01.1988, which was signed by Shri Joag and which was forwarded to the Ministry through proper channel. They also state that the forms for preparing the pension papers were sent to him in March 1988 and again in May 1988. Shri Joag completed these papers and returned them to the concerned authorities vide his letter dated 11.05.1988. Shri Joag's letter dated 11.05.1988 makes it clear that he received the pension paper well in time but on account of his wife's ill health could not complete the same prior to May 1988. It is thus evident that Shri Joag was aware of the acceptance of his notice of retirement, ^{which} ~~(when)~~ was notified on 15.02.1988 and had also been published in the Gazettee.

16. Shri Joag argues that his notice of retirement was conditional and should not have been acted upon. The Department's reply is that the wording of the notice made it plain that it was not conditional. Shri Joag had no doubt referred to his inability to serve in Calcutta when his wife was seriously ill in Pune while giving notice of retirement and requesting for curtailment of notice period. This was clearly in the context of reasons to be given by him when requesting curtailment of notice period as provided in Rule 48 (1-A)(a) of CCS (Pension) Rules. The Respondents assert that if there had been an iota of doubt that the notice was not voluntary or that it was conditional, the same would not have been considered at all. We agree with the respondents that it was not a conditional notice.

17. The applicant also alleges discrimination against him referring to the case of Shri Tamboli. The Respondents have made available a copy of the application for voluntary retirement given by Shri Tamboli dated 31.05.1985, where he stated that on account of financial hardship and lack of job satisfaction and demoralisation in view of absence of career prospects, etc. he had no alternative but to seek voluntary retirement from service. The department informed him that his letter under reference was not in conformity with the existing instructions and that if he wanted to voluntarily retire from service, he should give an unconditional notice of retirement. In case of Shri Joag, however, the notice of retirement merely highlighted the need for him to remain at Pune on account of prolonged illness of his wife and as it was not possible for the department to transfer him to Pune, he had to seek voluntary retirement. The case of Shri Tamboli is thus different from that of Shri Joag.

18. We therefore, hold that the department had conformed to the relevant rules while processing his notice of retirement and had not deviated from the established procedure.

19. The crucial question that remains to be considered is whether Shri Joag's retirement was forced upon him by the Government by acting unreasonably while dealing with his various requests.

Shri Joag alleges that the respondents had a deep seated prejudice against him. He refers in this connection not only to the refusal to accede to his request for a posting in Pune, but also the past conduct. He was compulsorily retired under Rule FR 56(j) which was set aside by the Tribunal. He claims that Shri Saxena, who was director, CWPRS, Pune, bore a grudge against him, as Shri Joag refused to accede to his demand that the applicant's research papers should be published in the name of Shri Saxena, as the principal author. Shri Joag alleges that Shri Saxena got him transferred in 1981 from CWPRS, Pune and was also instrumental for various adverse remarks in the Confidential Reports of the Applicant. On account of the influence of Shri Saxena, the applicant was further harassed by the department and departmental proceedings were instituted against him. His requests for being posted back at Pune were also rejected by the Government.

20. We have carefully considered the allegations of Shri Joag as spelt out in the application and also in his submissions, including the text of his arguments at the time of hearing. We are not convinced that the department had demonstrated any grudge against Shri Joag.

On receipt of the Tribunal's Order dated 26th August, 1987, the Department seems to have initially intended to move the Supreme Court, but eventually decided against it. They had taken steps to implement the directions within a reasonable time. We are concerned in the present application with the attitude of the Department, after Shri Joag was ordered to be reinstated by the Tribunal's directions of August 1987. Shri Saxena, (Director of the C.W.P.R.S. died in 1985. Whatever may be the inter-personal relation between the applicant and Shri Saxena, it will strain anyone's credibility to imagine that Shri Saxena could have influenced the different authorities to harass Shri Joag and to arrest the advancement of his career and to deny him a posting at Pune. Shri Joag was in Pune after joining Central Government Service in November 1962 till 1981, when he was transferred as Deputy Director in the Office of the Textile Commissioner, Bombay, where he continued till October 1986, when he was compulsorily retired. His transfer to Bombay after serving in Pune for about two decades cannot be termed as motivated. The adverse remarks referred to by Shri Joag related to the years 1982-83, 1983-84 and 1984-85. During this period, he was serving in the Office of the Textile Commissioner, Bombay, which is distinct from the Department of Statistics, the cadre controlling authority. Certain disciplinary proceedings were initiated by the Ministry Of Commerce when he was serving in Bombay and not by the Department Of Statistics. In fact, on getting his notice of retirement in January 1988, the Department Of Statistics took up with the Ministry Of Commerce and got the proceedings dropped. We also find from the noting in the file when his request for voluntary retirement was processed, the department had specifically brought to the attention of the Union

Minister for Planning about Shri Joag's representations for a posting at Pune. There is therefore no basis for his allegations that his representations were suppressed by the Secretary and not shown to the Minister.

21. Shri Joag also refers to the fact that after the Tribunal passed the order for reinstatement in service in August 1987, which were to be implemented before 30.09.1987, the department issued him a posting order at Calcutta and insisted on his joining by 29.10.1987, failing which, he was threatened that the period beyond that date will be treated as dies-non. The department explains that they had to do so because despite a number of orders, Shri Joag had not made any effort to join at Calcutta, which was the only available place for his posting. They also state that they had to implement the directions of the Tribunal, which gave them time till 30.09.1987. The explanation of the Department has considerable force, as admittedly Shri Joag did not show interest in joining duty at Calcutta after getting the order of the Tribunal reinstating him in service with full back wages.

22. The main plank on which Shri Joag rests his case is that his retirement was forced upon him by the employer as his requests for posting at Pune were turned down by the cadre controlling authority. In this connection, he cites various authorities to support his contention.

23. The department answers that absolutely no duress was exerted on Shri Joag to force him to retire from service. His transfer to Calcutta was ^{ordered}~~ordered~~ after (67)

making all reasonable efforts to get him posted at Pune and only when this failed, they were left with no alternative but to send him to Calcutta. Shri Joag throughout his career in the I.S.S. had served in Pune, except for a spell of five years in Bombay. They further state that they had not closed the issue of his possible retransfer to Bombay or nearabout as and when a vacancy arose but the clear request of Shri Joag for a voluntary retirement had foreclosed ~~this~~. The department categorily declare that they treated Shri Joag in a fair manner. The fact that they took up with the Ministry Of Commerce to drop the departmental proceedings against Shri Joag would show that they did not want to harass him.

24. Shri Joag contends that there were a number of methods by which he could have been posted to Pune instead of Calcutta, which he had spelt out in his representations dated 02.10.1987 and 06.10.1987. These are that he could be transferred back to CWPRS, Pune, by transferring the existing incumbent elsewhere. Alternatively, he could be allowed to work in the office of N.S.S.O. at Pune against the vacant post in N.S.S.O. at Calcutta. He could be posted as Officer-in-charge, Divisional Office, N.S.S.O. (FOD), Pune. He claimed that a similar arrangement was made in the case of Shri B. B. Bahl, who was Officer-in-charge, Regional Office, N.S.S.O. (FOD), Gwalior. He could be granted Study Leave upto 30.04.1988 for completing the post graduate course in Computer Management in Pune. The department could further explore the possibility of posting him on deputation or otherwise to any organisation at Pune, after the expiry of the Study Leave, as sought for.

25. We find from the records that after the department decided to reinstate Shri Joag in service on the basis of the Tribunal's Order dated 26th August, 1987, they took up with Dr. Seshagiri, Director General, N.I.C., vide letter dated 10.09.1987 forwarding Shri Joag's representation dated 28.04.1986 for considering his posting in the Regional Centre of N.I.C., Pune. The Secretary, Department Of Statistics, had requested the Director General, N.I.C., to consider as to whether it would be possible for him to take Shri Joag on deputation to N.I.C. at Pune. The Secretary, had also referred to the fact that Shri Joag's representation dated 28.04.1986 could not be forwarded earlier, as he was then facing disciplinary proceedings and subsequently the Government decided to retire him prematurely in October 1986. He also mentions that on his reinstatement in service as per the orders of the Tribunal, Shri Joag had submitted another representation requesting that his earlier application should be forwarded.

 The Department Of Electronics had examined this request and found that it was not possible to accede to it. The Director General, N.I.C., Pune, replied vide his letter dated 18.09.1987 that in May 1986, the N.I.C. was willing to consider the case of Shri Joag for posting on deputation to Pune but in view of the absence of any response for a long time, they had taken necessary action to fill up the vacancies.

26. As regards the suggestions given by Shri Joag in his letter dated 02.10.1987 and 06.10.1987, the Department found on examination that it was not possible to resort to any of the methods suggested. His request

that the present incumbent in CWPRS should be transferred elsewhere to accomodate Shri Joag as also his proposal that he should be allowed to work in Pune against the vacant post of N.S.S.O. at Calcutta¹⁷ were held to be inadvisable and were not agreed to. As for N.S.S.O. (FOD), the post concerned is of Grade-IV level, whereas Shri Joag is a Grade-III Officer. The case of Shri Bahl quoted by the applicant, was found to be different. Shri Bahl had come to Gwalior from Barelli with mutual exchange with another officer, who went to Barelli and there was no question of diversion of any post in that case. His request for Study Leave upto 30.04.1988 also could not be agreed to, as he had less than three years of service from the date on which he would return to duty after expiry of the leave. Grant of Study Leave would therefore be against the provisions of Rule (5)(ii) of the CCS (Leave) Rules. The Department was also not convinced at that stage that grant of study leave to Shri Joag for the proposed course of study would be in the public interest.

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27. From the position explained above, it is evident that the department did make reasonable efforts to accomodate the request of Shri Joag for posting him at Pune, but could not do so on account of various constraints. It is no doubt true that if Shri Joag had got a posting at Pune, he would not have submitted the notice of retirement dated 01.01.1988, as he seems to have been desperate to remain at Pune to give company to his wife who had been seriously ill. If there was any compulsion for him to seek voluntary retirement, it was only on account of his personal family circumstances. The Government had not adopted any means with a view to

forcing him to seek retirement and the cadre controlling authority had not dealt with him unreasonably.

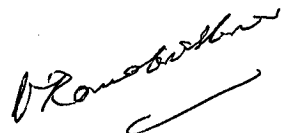
28. Shri Joag who argued his case in person had made commendable efforts to locate and study various case laws pertaining to the question of forced resignation. Unfortunately, however, the authorities cited by him do not support his case. He has referred to the Bombay High Court decision in Shriram Swami Shikshan Sanstha Vs. Education Officer, Zilla Parishad, Nagpur. The question that arose in that case was whether the Education Officer, Zilla Parishad, Nagpur had jurisdiction to decide whether the alleged resignation given by an assistant teacher in a private school is a resignation according to law or is a forced resignation. The court held that the Education Officer, Zilla Parishad, Nagpur, had acted without jurisdiction in entertaining the complaint. The court had also observed that it is a well settled proposition of law that a forced resignation, which means resignation not voluntarily given by the employee but is brought about by force, duress or in any other manner by the employer is by an act of the employer. In substance the contract of service comes to an end in such case by the action on the part of the employer. It, therefore, amounts to termination of service by the employer. In the present case, there has been no duress by the employer forcing Shri Joag to seek retirement. In the case of Ms. P. Baby Vs. Air Officer Commanding-in-Chief, Head Quarters Maintenance Command, Indian Air Force, Nagpur & Another (1989) 11 ATC 583, the question that arose was whether the employer was right in refusing to allow the withdrawal of notice of retirement before the expiry of the period of notice. The applicant before us did not withdraw his notice of


voluntary retirement dated 01.01.1988 before it actually took effect. He had not protested before the Government at any time against acceptance of his notice for voluntary retirement before he approached the Tribunal on 31.7.1989. The judgement of the Delhi High Court in D.E. SU. Vs. Tara Chand 1978(2) SLR 425 dealt with a case where an official while submitting his resignation had levelled various charges against his superiors and offered to substantiate the same. The official also stated that he was compelled by his superiors to write the letter. The notice given by Shri Joag was not as a result of force exerted by his superiors. It merely refers to his serious personal problems but the same can be construed only ^{as} a compulsion brought upon him by domestic difficulties and not by the employer. Shri Joag referred to the Supreme Court decision in P. Kasilingam Vs. P.S.G. College Of Technology AIR 1981 SC 791. The applicant in that case was a lecturer in P.S.G. College Of Technology and submitted a resignation to take effect from 19.09.1976 which was accepted. The management however relieved him in April 1976 on payment of salary for the period upto 19.09.1976. The lecturer preferred an appeal under Section 20 of Tamil Nadu Private Colleges (Regulation) Act (19 of 1976). The court had observed that ^{if} a Government servant submitted resignation in compelling circumstances, it would not necessarily give rise to an inference that his act in doing so was voluntary. The lecturer in that case had submitted a letter of apology which virtually amounted to an admission of guilt, along with the unconditional letter of resignation, which was part of a deal between the management and the employee. Shri Joag's case is obviously different.

It is evident from the above analysis that in the context of the facts of the present case, none of the decisions cited above is of any assistance to Shri Joag.

The applicant has also cited the decision of Supreme Court in M/s. Hindustan Tin Works Pvt. Ltd. V/s. the Employees of M/s. Hindustan Tin Works Pvt. Ltd. and others AIR 1979 SC 75. This deals with the question of entitlement of back wages of workers whose services had been illegally terminated. When it is held that the acceptance of the notice of retirement by the government servant is not illegal, the question of payment of back wages does not arise.

29. In the light of the foregoing discussions, we hold that the applicant is not entitled to any of the reliefs sought for by him. The application accordingly stands dismissed with no order as to cost.


(V. RAMAKRISHNAN)
MEMBER (A)


(M. S. DESHPANDE)
VICE CHAIRMAN.