

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 369 of 2000.

Dated this Tuesday, the 24th day of April, 2001.

Smt. Vaishali Krishna Wavekar, Applicant.

Shri A. I. Bhatkar, Advocate for the
Applicant.

VERSUS


Union Of India & Others, Respondents.

Shri V. S. Masurkar, Advocate for the
Respondents.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

Hon'ble Shri S. L. Jain, Member (J).

- (i) To be referred to the Reporter or not ? *Yes*
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? *Yes*
- (iii) Library. *Yes*


(B. N. BAHADUR)
MEMBER (A).

OS*

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Hon'ble Shri S. L. Jain, Member (J).

Smt. Vaishali Krishna Wavekar,
U.D.C. at Naval Armament Depot,
Karanja.

Residing at - Kiran Niwas,
House No. 385, Ghospada,
Nagaon, P.O. Uran, Tq. Uran,
Dist. Raigad, Navi Mumbai - 400 702.

... Applicant.

(By Advocate Shri A. I. Bhatkar)

VERSUS

1. Union of India through
The Secretary,
Ministry of Defence,
DHQ PO,
New Delhi - 110 011.

2. The Chief of the Naval Staff,
Naval Headquarters,
Sena Bhavan,
New Delhi - 110 011.

4. The General Manager,
Naval Armament Depot Karanja,
Navi Mumbai - 400 704.

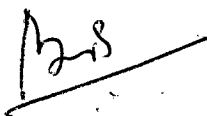
... Respondents.

(By Advocate Shri V. S. Masurkar)

OPEN COURT ORDER

PER : Shri B. N. Bahadur, Member (A).

This is an application made by Smt. Vaishali
Krishna Wavekar, seeking the relief from this Tribunal as
follows :



- "(a) This Hon'ble Tribunal will be graciously pleased to call for the records pertaining to issuance of the impugned order dated 29.04.2000 or any other order and after going through the legality and validity of the same quash and set aside the same.
- (b) The Hon'ble Tribunal will be graciously pleased to direct the Respondents to reinstate the Applicant into service with effect from 30th April 2000 (PM) with all circumstantial benefits including pay and allowances.
- (c) This Hon'ble Tribunal will be graciously pleased to pass such other and further orders as deemed fit in the facts and circumstances of the case.
- (d) That the cost of this Application be awarded to the Applicant. "

2. The case of the Applicant as brought forth in this O.A., as also through arguments made by their Learned Counsel, Shri A. I. Bhatkar, is as follows :

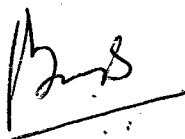
The Applicant who is an employee of the Respondents, submitted an application on 01.02.2000 seeking Voluntary Retirement from 30.04.2000. Before the second date, she made an application dated 21.03.2000 withdrawing her request for Voluntary Retirement. The Respondents gave a reply on 17.04.2000 (Exhibit 4) referring to both these applications and intimating the Applicant that her request for voluntary retirement w.e.f. 30.04.2000 had been accepted by the competent authority.

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3. The case of the Applicant, as argued by his Learned Counsel was that the matter was no longer res integra and was covered by more than one judgement of the Supreme Court. These judgements cited will be discussed ahead in this order. Two points were made by the Learned Counsel. The first to state that the very action for rejecting the request of withdrawal of voluntary retirement was wrong and deserves to be quashed and secondly, that for the period from 01.05.2000 the Applicant was entitled to all benefits including counting of the period as duty for all purposes and also for arrears, etc.

4. The defence of the Respondents as taken in the Written Statement dated 20.10.2000 is that the Applicant, while making her application for voluntary retirement, was fully aware of her liability, and that the request was made after full circumspection of all facts, including financial and family matters. Also, that the request for withdrawal came after the competent authority had made its decision and that the reasons given for withdrawal of request are not cogent and not merited, as it will form a bad precedent.

5. The Learned Counsel for the Respondents while arguing the case, did however accede to the acceptance of the law settled by the ^{Hon.} Supreme Court, but made the point that no interest may be granted, and also reiterated the points made in para 8 of the Respondents' reply.



6. We have considered the papers in the case and have also considered the arguments made on behalf of both sides. Clearly, the matter is no longer res integra, and has been settled by more than one judgement of the Hon'ble Supreme Court. Two issues arise for our consideration. The first one being as to whether the action of the Respondents in rejecting the request for withdrawal and relieving the Applicant from 01.05.2000 is correct ? Secondly, ~~if~~ ^{also} the action is not correct, what relief is called for especially in regard to the arrears for the period, which relief has ^{also} been specifically prayed for?

7. The case law cited in the matter is as follows :

- (i) Balram Gupta V/s. Union Of India & Another reported at 1988 (1) AI SLJ 79.
- (ii) Power Finance Corporation Ltd. V/s. Pramod Kumar Bhatia reported at 1997 SCC (L&S) 941.
- (iii) J. N. Srivastava V/s. Union Of India & Another reported at 1998 SCC (L&S) 1251.
- (iv) Shambhu Murari Sinha V/s. Project & Development India & Another reported at 2000 SCC (L&S) 741.
- (v) Union Of India & Another V/s. Wingd Commander T. Parthasarathy reported at 2000 (1) ATJ 168.

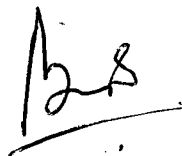
We have carefully gone through the judgements and need not go into stating any reasons for the decisions that we arrive at, ^{in view of} ~~under~~ the guidance of the law settled by the Hon'ble Supreme Court. It is clear that the action of the Respondents, in refusing to accept the withdrawal of

voluntary retirement is patently wrong and in fact, against the law settled by the Hon'ble Supreme Court. We would have therefore no hesitation in declaring that the action taken by the Respondents is wrong and that the Applicant would need to be reinstated on the post, where she was working, forthwith.

8. We now come to the issue regarding^{how} the period between 01.05.2000 and the date on which she is reinstated should be treated. In this context, the Learned Counsel for the Applicant cited the case of J. N. Srivastava V/s. Union Of India & Another [1998 SCC (L&S) 1251] where this issue had been decided. The relevant part of the judgement reads as follows :

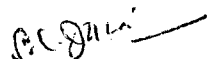
"It was submitted by learned Senior Counsel for the respondent authorities that no back salary should be allowed to the appellant as the appellant did not work and therefore, on the principle of "no work, no pay", this amount should not be given to the appellant. This submission of learned Senior Counsel does not bear scrutiny as the appellant was always ready and willing to work but the respondents did not allow him to work after 31.1.1990. The respondents are directed to make available all the requisite monetary benefits to the appellant as per the present order within a period of 8 weeks on the receipt of copy of this order at their end. Office shall send the same to the Respondents at the earliest."


In view of this ratio by the Hon'ble Supreme Court, the Applicant will have to be provided full benefits right from 01.05.2000.



9. In view of the above discussions (of) the law and the ratio of the decisions of the Supreme Court applicable here, this O.A. is allowed in terms of the following orders :

- (i) The communication to the Applicant from the Naval Armament Depot, Karanja, dated 29.04.2000 (Exhibit -1) is hereby quashed and set aside. The applicant shall be reinstated on the post/ equivalent post where she was working forthwith, on receipt of a copy of this order.
- (ii) The Applicant shall be considered to be on duty from the 1st of May, 2000 to the date on which she joins. The Applicant should appear before the Respondents forthwith, and she shall be allowed to join forthwith also, but in no case later than within ten days from the date that she appears before the Respondents.
- (iii) The period from 01.05.2000 to the date of her joining shall be treated as duty for all purposes. She will be given arrears of pay and allowances as admissible within three months from the date of receipt of a copy of this order. No interest on arrears will be available to the Applicant.
- (iv) There will be no orders as to costs.


(S.L. JAIN)
MEMBER (J).


(B.N. BAHADUR)
MEMBER (A).