

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH  
\*\*\*\*\*

Commercial Complex (BDA)  
Indiranagar  
Bangalore - 560 038

Dated : 5 JUL 1988

IA I IN APPLICATION NO.

1088

/ 87(F)

W.P. NO.

Applicant(s)

Shri M.S. Narasimha Murthy

To

v/s

Respondent(s)

The Collector of Customs, Bangalore & 2 Ors

1. The Collector of Customs  
Central Revenue Building  
Queens Road  
Bangalore - 560 001

2. The Deputy Collector of  
Central Excise (P & E)  
Central Revenue Building  
Queens Road  
Bangalore - 560 001

3. The Assistant Collector of Customs  
(Preventive)  
Headquarters Office  
Central Revenue Building  
Queens Road  
Bangalore - 560 001

4. Shri M.S. Padmarajaiah  
Central Govt. Stng Counsel  
High Court Building  
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/ADDITIONAL ORDER  
passed by this Tribunal in the above said application(s) on 30-6-88.

Encl : As above

*R. Venkatesh*  
DEPUTY REGISTRAR  
(JUDICIAL)

*dc*

*Issued  
K. M. Raju  
6-7-88*

**IN THE CENTRAL ADMINISTRATIVE  
TRIBUNAL ADDITIONAL BENCH,  
BANGALORE**

M.S. Narasimha Murthy

Application No. 1088/87(F)  
V/s The Collector of Customs, B'lore & 2 Ora  
Order Sheet (contd)

Dr M.S. Nagaraja

M.S. Padmarajaiah

Date	Office Notes	Orders of Tribunal
		<p>KSP/LHAR : 30.6.88</p> <p><u>ORDERS ON I.A.No.1</u></p> <p>As the respondents have already implemented the orders of this Tribunal made on 10.6.88, the counsel for the respondents <del>may</del> <del>is</del> <del>is</del> withdrawing this I.A. <del>as</del> <del>is</del> liable to be dismissed. We, therefore, reject this application.</p>



Sd/-

VC

TRUE COPY

*Dr. Venkateshwaran*  
DEPUTY REGISTRAR (JD)  
CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE

Sd/-

M(A)

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH.  
\* \* \* \* \*

Commercial Complex (BDA)  
Indiranagar  
Bangalore - 560 038

Dated : 13 JUN 1988

APPLICATION NO. 1088 / 87(F)

W.P. NO. /

Applicant(s)

Shri M.S. Narasimha Murthy

v/s

Respondent(s)

The Collector of Customs, Bangalore & 2 Ors

1. Shri M.S. Narasimha Murthy  
No. M-3, C.P.W.D. Quarters  
Vijayanagar  
Bangalore - 560 040

4. The Deputy Collector of  
Central Excise (P & E)  
Central Revenue Building  
Queens Road  
Bangalore - 560 001

2. Dr M.S. Nagaraja  
Advocate  
35 (Above Hotel Swagath)  
1st Main, Gandhinagar  
Bangalore - 560 009

5. The Assistant Collector of Customs(Preventive)  
Head Quarters Office  
Central Revenue Building  
Queens Road  
Bangalore - 560 001

3. The Collector of Customs  
Central Revenue Building  
Queens Road  
Bangalore - 560 001

6. Shri M.S. Padmarajaiah  
Central Govt. Stng Counsel  
High Court Building  
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Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/STRAV/INTERIM ORDER  
passed by this Tribunal in the above said application(s) on 10-6-88.

Encl : As above

DEPUTY REGISTRAR  
(JUDICIAL)

RE

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH, BANGALORE

DATED THIS THE TENTH DAY OF JUNE, 1988

Present : Hon'ble Justice Shri K.S. Puttaswamy ... Vice-Chairman

Hon'ble Shri P. Srinivasan ... Member (A)

APPLICATION NO.1088/87(F)

Sri M.S. Narasimha Murthy,  
No.M-3, C.P.W.D. Quarters,  
Vijayanagar, Bangalore-40.

Applicant

(Dr. M.S.Nagaraja .. Advocate)

v.

The Collector of Customs,  
Central Revenue Building,  
Queens Road, Bangalore-1.

The Deputy Collector of  
Central Excise ( P & E ),  
Queens Road, Bangalore.

The Assistant Collector  
of Custome (Preventive),  
Head Quarters Office,  
Central Revenue Building,  
Queens Road, Bangalore-1.

Respondents

(Shri M.S. Padmarajaiah . Advocate)

This application came up before this Tribunal for hearing..  
on 6th June 1988. Hon'ble Shri P. Srinivasan, Member (A) made  
the following:

O R D E R

The applicant who joined service in the Central Excise  
and Customs Department as a Sub-Inspector on 4.7.1958 and  
was promoted as Inspector on 11.11.1971 sought voluntary  
retirement from service in a long letter dated 22/25.9.1987  
addressed to the Collector of Customs, Bangalore. In that  
letter, the applicant alleged that he had borrowed a sum of  
Rs.83,000 from a friend of his at the instance of his Assistant  
Collector of Customs to be used to trap a gold smuggler



through the medium of a decoy purchaser. The Assistant Collector had later disowned responsibility for the same and the applicant was unable to get back the money so used to repay the loan amount taken by him. The lender had threatened him with legal action and attachment. "I have taken the legal opinion in this respect", he wrote "and I have been suggested to opt for retirement now itself so that financier will not have a chance for attachment of pension for which the law doesn't permit. I was further suggested that I could clear the principal to my friend now itself instead of regular retirement". He, therefore, requested that he be "granted" retirement "as soon as possible so that I can return the borrowed amount from retirement benefits to save my face from shame which could crop up once the attachment is taken up." He also sought permission to sue the Assistant Collector and another person for breach of trust in misusing <sup>the</sup> money handed over to them and for recovery of the said money from them. The Collector of Central Excise, Bangalore, who was the competent authority in this regard treated this as a notice of voluntary retirement under Rule 48A(1) of the CCS (Pension) Rules, 1972. The acceptance of the said notice by the Collector was conveyed in an order dated 30.10.1987 issued on his behalf by the Deputy Collector (Personnel and Establishment), Central Excise, Bangalore. The order narrated that "he (the applicant) is permitted to retire from service under Rule 48A(1) of the CCS (Pension) Rules, 1972, with effect from the afternoon of 22.12.1987".



P. S. - V

According to the applicant, he received this order on 19.11.1987. Meanwhile the applicant addressed a letter dated 13.11.1987 to the Collector of Customs, Bangalore, requesting that his notice of voluntary retirement be treated as withdrawn. "I understand", he wrote, "that the Deputy Collector of Central Excise and Customs (P and E), Bangalore, under her letter No.C No.II/3/113/87 A.1, dated 30.10.1987 has permitted me to retire from service under rule No.48-A(1) of CCS (Pension) Rules, 1972, with effect from 22.12.1987, on the basis of my purported notice of retirement". He went on to say that his letter of 22/25.9.1987 had been written in a disturbed state of mind "in circumstance tantamount to duress because I had been badly let down by the Assistant Collector (Prev) Shri Harbinder Bansi". He no longer wanted to go on voluntary retirement and so he requested that his notice be treated as withdrawn. He also enclosed a petition asking for a thorough enquiry into the allegations made by him against the said Assistant Collector and requested that the sum of Rs.83,000 be reimbursed to him. After some delay, the Collector of Central Excise, Bangalore, rejected the applicant's request by letter dated 18.12.1987 in these words: "your request for withdrawal of notice dated 22.9.1987 for voluntary retirement cannot be acceded to". In this application, the prayer of the applicant is that order dated 30.10.1987 (Annexure A-5) accepting his notice of voluntary retirement and permitting him to retire from 22.12.1987 be struck down; and Respondents be directed to accept his request



P. J. - the

dated 13.11.1987 for withdrawal of his earlier notice of voluntary retirement.

2. Dr. M.S. Nagaraja, learned counsel appearing for the applicant submitted that in the first instance the notice dated 22/25.9.1987 given by the applicant was not in reality and essence a voluntary action but had been given under/stress of circumstances ie., by the situation caused by the betrayal of the trust placed by him in the Assistant Collector of Central Excise as a result of which he was unable to repay/large sum of money which he had borrowed from a friend on the word of the said Assistant Collector. The applicant had sent his letter withdrawing the notice of voluntary retirement/before the acceptance of the notice was communicated to him. While the order accepting his notice of voluntary retirement was passed on 30.10.1987 it was communicated to him officially only on 19.11.1987, though he came to know of it unofficially earlier when he addressed the letter dated 13.11.1987. In any case, his letter withdrawing the earlier notice of voluntary retirement was sent well before the date from which his retirement was to be effective, that is, well before 22.12.1987. The proviso to Rule 48A(4) requires that a request for withdrawal shall be made before the intended date of retirement under the said rule. No doubt a person who had given notice of voluntary retirement to the appointing authority is precluded from withdrawing his notice except with the specific approval of the authority. But when he seeks permission to withdraw the notice and his request for withdrawal is made before the



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intended date of his retirement, the appointing authority cannot withhold approval to the request unreasonably. The authority cannot act arbitrarily and reject the request without proper reason. Moreover, the applicant had explained why he was withdrawing his earlier notice. He had stated that he had given the notice under conditions of stress and so wanted to withdraw it. The appointing authority had rejected his request for withdrawal without assigning any reason whatsoever. The applicant ~~understood~~ that his request had been rejected only because the authority concerned thought that it would be a good riddance if he retired. But, that was no reason to reject his request. Dr.Nagaraja relied on the decision of the Supreme Court in BALRAM GUPTA V. UNION OF INDIA - AIR 1987 SC 2354 as also the earlier decision of the Supreme Court in AIR 1978 SC 694 UNION OF INDIA V. GOPAL CHANDER MISHRA.

3. Shri M.S. Padmarajaiah, learned counsel for the Respondents strongly resisted the contentions of Dr.Nagaraja. Drawing our attention to Rule 48A(4) of the CCS (Pension) Rules, 1972, Shri Padmarajaiah pointed out that ordinarily a notice of voluntary retirement cannot be withdrawn except with the specific approval of <sup>the competent</sup> ~~such~~ authority. The proviso which requires that the request for withdrawal shall be made before the intended date of retirement should not be read in isolation. What was sought to be withdrawn was the notice of voluntary retirement. Once the notice was accepted it can no longer be said to be pending as a notice



P. D. - 100

to be withdrawn by the Government servant thereafter. Therefore, a notice of voluntary retirement can be withdrawn only before it was accepted and not after. The intended date of retirement was no doubt the outer limit of time by which a request for withdrawal should be made, but that did not mean that the request could be made after the notice of voluntary retirement had been accepted by the competent authority. If the competent authority does not act on the notice of retirement, then and only then, does the outer limit of time set by the intended date of retirement become operative. Drawing an analogy from the law of contracts, Shri Padmārajaiah submitted that an offer remains an offer only till it is accepted and once it is accepted it ceases to be an offer and cannot be withdrawn. In this case, the notice of voluntary retirement given by the applicant was accepted by the Respondent 1 by his order dated 30.10.1987 and the applicant was aware of it when he wrote the letter dated 13.11.1987 seeking to withdraw his earlier notice. If the official communication of acceptance of his notice of voluntary retirement was made only on 19.11.1987 it could be because the applicant was not available for service earlier or might have deliberately avoided receiving it earlier. So long as the applicant himself knew that his notice of voluntary retirement had been accepted, effective communication had in fact been made to him. It was clear from the first sentence of the applicant's letter of withdrawal dated 13.11.1987 that he was already aware of the acceptance of his earlier notice. He was, therefore, precluded from



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withdrawing his earlier notice of voluntary retirement on 13.11.1987 and the Respondents had rightly rejected his request for withdrawal. The Respondents had rejected the application for withdrawal on the ground that it would be a good riddance if the applicant retired and that was sufficient reason for doing so. Even if it were not considered to be a relevant reason this Tribunal cannot straightaway direct the Respondents to accept the applicant's request for withdrawal and to take him back to service. The most that this Tribunal could do was to direct the Respondents to consider the applicant's request for withdrawal of his earlier notice of voluntary retirement afresh and to come to a reasoned decision one way or the other thereon. In short, Shri Padmarajaiah's contention was that the applicant's application should be dismissed or the respondents should be directed to consider the question of the applicant's withdrawal of his earlier notice of voluntary retirement afresh and pass an order thereon with valid reasons.

4. We have considered the rival contentions carefully. The first point at issue is whether the applicant made the request for withdrawal of his notice of voluntary retirement within the time stipulated in the proviso to Rule 48A(4) of the CCS (Pension) Rules, 1972. On this point it would be useful to extract Rule 48A to the extent it is relevant for the purpose of this application. This is how the relevant portion of the rule reads:-



25-10-88

"48-A. Retirement on completion of 20 years' qualifying service

(1) At any time after a Government servant has completed twenty years' qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority, retire from service.

(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority:

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

(3) Deleted

(3A) (a) ...

(b) ...

(4) A Government servant who has elected to retire under this rule and has given the necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority:

Provided that the request for withdrawal shall be made before the intended date of his retirement."

The proviso to Sub-rule (4) requires that the request for withdrawal shall be made before the intended date of retirement. So far as we can see this is the only limit of time prescribed for the purpose. Shri Padmarajaiah

would have us read into the proviso something more than what the plain words state. If the intention was that the request for withdrawal should be made before the notice of voluntary retirement is accepted the proviso itself would have said so. The proviso would then have read somewhat as follows: "provided that the request for



P.F. 

withdrawal shall be made before the acceptance of the notice given by the Government servant or the intended date of retirement whichever is earlier". In the absence of a specific limitation of the kind suggested by Shri Padmarajaiah we are unable to agree with him that the notice of withdrawal given by the applicant in the present case before the intended date of his retirement was beyond the time limit prescribed in the proviso.

5. At this stage, it would be useful to refer to the judgment of the Supreme Court in Gopal Chander Mishta's case AIR 1978 SC 694. In that case a Judge of the Allahabad High Court gave notice by letter dated 7.5.1977 that he would resign from his office with effect from 1.8.1977. He revoked this communication by a subsequent letter dated 15.7.1977. The question was whether he could thus withdraw his earlier notice of resignation. Under proviso (a) to Article 217(1) of the Constitution, "a judge may, by writing under his hand addressed to the President, resign his office." There is no need in his case for the resignation to be accepted by the President. Once he sends in his resignation, the resignation takes effect from the date mentioned in his letter. It was, therefore, contended before the Supreme Court that the Judge having communicated to the President of India in accordance with Article 217(1) proviso (a) his intention to resign with effect from 1.8.1977, the resignation was final and irrevocable and he could not withdraw the same before the date of intended resignation. The Supreme Court held that "resigning office necessarily involves relinquishment of the office which

P. J. M.



implied cessation or termination of, or cutting assunder from the office... "(See para 10 of the Judgment in Balram Gupta's case paraphrasing the judgment in Gopal Chander Mishra's case). The Court also observed that in the absence of a legal, contractual or constitutional bar, a notice of intention to resign from a post from a future specified date can be withdrawn at any time before it became effective ie., before it effects termination of the tenure of the office/post or employment. "This general rule", as explained by their Lordships in Balram Gupta's case at page 2358 of the report, "equally applies to Government servants and constitutional functionaries". Deriving from the same decision, we find the following observation in Balram Gupta's case (AIR 1987 SC 2354) at page 2358: "On the principles of general law the offer to relinquishment could have been withdrawn by the appellant before the date it became effective if sub-rule (4) of Rule 48-A was not there". From this it is clear that the principle laid down in Gopal Chander Mishra's case was that an intimation to resign or retire from a future date can be withdrawn before such date. To be more specific the withdrawal can be made at any time before the relationship of master and servant is severed ie., before the retirement or resignation actually would take effect in terms of the intimation. It is in this background that we should read the proviso to sub-rule 4 of Rule 48A and if we do so, only one conclusion is possible, ie., that a notice of voluntary retirement can be withdrawn at any time before the intended date of retirement irrespective of whether the notice of retirement had been accepted or not by the competent authority in the meanwhile.



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6. The facts in Balram Gupta's case are in all respects pari materia with the facts of this case. There the notice of voluntary retirement was sought to be withdrawn before the retirement was to take effect but after the notice of retirement had been accepted by the competent authority. Referring specifically to Rule 48A of CCS (Pension) Rules, the court observed that till the date his retirement became effective the appellant therein continued to be a Government employee. There was no unilateral termination of this relationship prior to that date. He was, therefore, at liberty and entitled independently without sub-rule 4 of Rule 48A of the Pension rules, as a Government servant, to withdraw his notice of voluntary retirement. Applying the ruling in Balram Gupta's case on we must hold that the application/13.11.1987 was well within the time limit prescribed therefor ie., the date of his intended retirement, irrespective of whether his earlier notice had been accepted or not in the meanwhile.

7. We now come to the question as to whether the Respondents rightly rejected the request of the applicant to withdraw his notice of voluntary retirement. No doubt a notice of voluntary retirement cannot be withdrawn except with the specific approval of the competent authority. This does not mean that Government can reject a request for withdrawal arbitrarily. In Balram Gupta's case, the Supreme Court referred to the prohibition in sub-rule 4 of Rule 48A against making a request for withdrawal without



approval from the competent authority and observed that if the power conferred on the government was properly exercised, it would be a salutary rule. Their Lordships observed further, that "approval, however, is not ipso dixit of the approving authority. The approving authority who has a statutory authority must act reasonably and rationally. The only reason put forward here is that the appellant had not indicated his reasons for withdrawal. This, in our opinion, was sufficiently indicated that he was prevailed upon by his friends and the appellant had a second look at the matter". Applying this test we find that in this case the applicant had explained that he had submitted the notice of voluntary retirement earlier under compelling circumstances and had later decided not to proceed on voluntary retirement. "In the modern age", as observed in Balram Gupta's case "we should not put an embargo on people's choice or freedom". It was not as if the Respondents had made arrangements to fill up the vacancy caused by the applicant's notice of retirement and that that compelled them to reject his request for withdrawal. As we have earlier noticed, the Collector of Central Excise merely observed that it would be a good riddance if the applicant were allowed to retire. In our opinion this was not a proper reason to reject the applicant's request for withdrawal of his notice. Once again we quote from the judgment in Balram Gupta's case: "the court cannot but condemn circuitous ways 'to ease out' uncomfortable employees."



We are, therefore, of the view that the Respondents have acted arbitrarily in rejecting the applicant's request for withdrawal of his notice of voluntary retirement.

8. We are unable to agree with the suggestion of Shri Padmaraiah that we should send the matter back to the competent authority if we hold that the reason given by him for rejecting the request for withdrawal was not proper. The fact is that the competent authority did once consider the applicant's request for withdrawal of his notice and decided to reject it but in our view, there was no justification for the rejection. There is no point in sending the matter back to the same authority to consider the matter once again. If the authority sticks to his earlier decision, the applicant will be obliged to come back to this Tribunal. We find no justification for prolonging the agony of the applicant and keeping the possibility of further litigation alive.

9. In the view we have taken of the matter we set aside the order dated 18.12.1987 of the Respondents rejecting the applicant's request for withdrawal of his notice of voluntary retirement and direct the Respondents to give the applicant a posting forthwith and in any case not later than 1.7.1988. The order dated 30.10.1987 accepting the applicant's notice of voluntary retirement and according him permission to retire with effect from 22.12.1987 will also stand cancelled in view of this order.



10. In the result we pass the following orders:-

(i) The order dated 18.12.1987 passed by Respondent 1 rejecting the applicant's request for withdrawal of his notice for voluntary retirement is set aside. Order of Respondent 1 dated 30.10.1987 accepting the notice of voluntary retirement given by the applicant and permitting him to retire from service with effect from 22.12.1987 also stands cancelled.

(ii) Respondents will give the applicant a posting as early as possible and not later than 1.7.1988.

(iii) The applicant shall be deemed to have been in service continuously from 22.12.1987 onwards with no break of service and will be entitled to all consequential financial benefits. Arrears of pay and allowances from 22.12.1987 should be paid to the applicant within three months from today.

11. The application is allowed. Parties to bear their own costs.



Sd/-

VICE CHAIRMAN  
10/6/88

Sd/-

MEMBER (A) 10/6/88

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SECTION OFFICER (1)6  
CENTRAL ADMINISTRATIVE TRIBUNAL  
ADDITIONAL BENCH  
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH

Commercial Complex(SDA),  
II Floor, Indiranagar,  
Bangalore- 560 038.

Dated: 13 JUN 1988

To.

1. Shri. Sanjeev Malhotra,  
All India Services Law Journal,  
Hakikat Nagar, Mal Road,  
New Delhi- 110 009.
2. Administrative Tribunal Reporter,  
Post. Box No. 1518,  
Delhi- 110 006.
3. The Editor,  
Administrative Tribunal Cases,  
C/o. Eastern Book Co.,  
34, Lal Bagh,  
Lucknow- 226 001.
4. The Editor,  
Administrative Tribunal Law Times,  
5335, Jawahar Nagar,  
(Kolhapur Road),  
Delhi- 110 007.
5. M/s. All India Reporter,  
Congressnagar,  
Nagpur.

Sir,

I am directed to forward herewith a copy of the under mentioned order passed by a Bench of this Tribunal comprising of Hon'ble Mr. Justice K.S. Puttaswamy Vice-Chairman/ Member(3) and Hon'ble Mr. P. Srinivasan Member(A) with a request for publication of the order in the Journals.

Order dated 10-6-88 passed in A.Nos. 1088/87(F)

Yours faithfully,

*for [Signature]*  
(B. V. VENKATA REDDY)  
DEPUTY REGISTRAR(3).

*Received  
K. M. P. S.  
14-6-88*

*(Signature)*

Copy with enclosure forwarded for information to:

1. The Registrar, Central Administrative Tribunal, Principal Bench, Faridkot House, Copernicus Marg, New Delhi- 110 001.
2. The Registrar, Central Administrative Tribunal, Tamil Nadu Text Book Society Building, D.P.I. Compunds, Nungambakkam, Madras- 600 006.
3. The Registrar, Central Administrative Tribunal, C.G.O. Complex, 234/4, A.J.C. Bose Road, Nizam Palace, Calcutta- 700 020.
4. The Registrar, Central Administrative Tribunal, C.G.O Complex(CBD), 1st Floor, Near Karkhan Bhawan, New Bombay- 400 614.
5. The Registrar, Central Administrative Tribunal, 23-A, Post Bag No. 013, Thorn Hill Road, Allahabad- 211 001.
6. The Registrar, Central Administrative Tribunal, S.C.O.102/103, Sector 34-A, Chandigarh.
7. The Registrar, Central Administrative Tribunal, Rajgarh Road, Off Shilong Road, Guwahati- 781 005.
8. The Registrar, Central Administrative Tribunal, Kandamkulathil Towers, 5th & 6th Floor, Opp. Maharaja College, M.G. Road, Ernakulam, Cochin-682001.
9. The Registrar, Central Administrative Tribunal, CARAVS Complex, 15 Civil Lines, Jabalpur(MP).
10. The Registrar, Central Administrative Tribunal, 88-A B.M. Enterprises, Shri Krishna Nagar, Patna-1.
11. The Registrar, Central Administrative Tribunal, C/o. Rajasthan High Court, Jodhpur(Rajasthan).
12. The Registrar, Central Administrative Tribunal, New Insurance Building Complex, 6th Floor, Tilak Road, Hyderabad.
13. The Registrar, Central Administrative Tribunal, Navrangpura, Near Sardar Patel Colony, Usmanapura, Ahmedabad.
14. The Registrar, Central Administrative Tribunal, Dolamundai, Cuttak- 753001.

Copy with enclosure also to:

1. Court Officer(Court I)
2. Court Officer(Court II)

sel | -

for (B.V. VENKATA REDDY)  
DEPUTY REGISTRAR(J).

o/c -

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH, BANGALORE

DATED THIS THE TENTH DAY OF JUNE, 1988

Present : Hon'ble Justice Shri K.S. Puttaswamy ... Vice-Chairman

Hon'ble Shri P. Srinivasan ... Member (A)

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Applicant

(Dr. M.S.Nagaraja .. Advocate)

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Respondents

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Collector of Customs to be used to trap a gold smuggler

• 1.1. - 10/

through the medium of a decoy purchaser. The Assistant Collector had later disowned responsibility for the same and the applicant was unable to get back the money so used to repay the loan amount taken by him. The lender had threatened him with legal action and attachment. "I have taken the legal opinion in this respect", he wrote "and I have been suggested to opt for retirement now itself so that financier will not have a chance for attachment of pension for which the law doesn't permit. I was further suggested that I could clear the principal to my friend now itself instead of regular retirement". He, therefore, requested that he be "granted" retirement "as soon as possible so that I can return the borrowed amount from retirement benefits to save my face from shame which could crop up once the attachment is taken up." He also sought permission to sue the Assistant Collector and another person for breach of trust in misusing <sup>the</sup> money handed over to them and for recovery of the said money from them. The Collector of Central Excise, Bangalore, who was the competent authority in this regard treated this as a notice of voluntary retirement under Rule 48A(1) of the CCS (Pension) Rules, 1972. The acceptance of the said notice by the Collector was conveyed in an order dated 30.10.1987 issued on his behalf by the Deputy Collector (Personnel and Establishment), Central Excise, Bangalore. The order narrated that "he (the applicant) is permitted to retire from service under Rule 48A(1) of the CCS (Pension) Rules, 1972, with effect from the afternoon of 22.12.1987"

P. J. - V

According to the applicant, he received this order on 19.11.1987. Meanwhile the applicant addressed a letter dated 13.11.1987 to the Collector of Customs, Bangalore, requesting that his notice of voluntary retirement be treated as withdrawn. "I understand", he wrote, "that the Deputy Collector of Central Excise and Customs (P and E), Bangalore, under her letter No.C No.II/3/113/87 A.1, dated 30.10.1987 has permitted me to retire from service under rule No.48-A(1) of CCS (Pension) Rules, 1972, with effect from 22.12.1987, on the basis of my purported notice of retirement". He went on to say that his letter of 22/25.9.1987 had been written in a disturbed state of mind "in circumstance tantamount to duress because I had been badly let down by the Assistant Collector (Prev) Shri Harbinder Bansi". He no longer wanted to go on voluntary retirement and so he requested that his notice be treated as withdrawn. He also enclosed a petition asking for a thorough enquiry into the allegations made by him against the said Assistant Collector and requested that the sum of Rs.83,000 be reimbursed to him. After some delay, the Collector of Central Excise, Bangalore, rejected the applicant's request by letter dated 18.12.1987 in these words: "your request for withdrawal of notice dated 22.9.1987 for voluntary retirement cannot be acceded to". In this application, the prayer of the applicant is that order dated 30.10.1987 (Annexure A-5) accepting his notice of voluntary retirement and permitting him to retire from 22.12.1987 be struck down; and Respondents be directed to accept his request

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dated 13.11.1987 for withdrawal of his earlier notice of voluntary retirement.

2. Dr.M.S. Nagaraja, learned counsel appearing for the applicant submitted that in the first instance the notice dated 22/25.9.1987 given by the applicant was not in reality and essence a voluntary action but had been given under/stress of circumstances ie., by the situation caused by the betrayal of the trust placed by him in the Assistant Collector of Central Excise as a result of which he was unable to repay/large sum of money which he had borrowed from a friend on the word of the said Assistant Collector. The applicant had sent his letter withdrawing the notice of voluntary retirement/before the acceptance of the notice was communicated to him. While the order accepting his notice of voluntary retirement was passed on 30.10.1987 it was communicated to him officially only on 19.11.1987, though he came to know of it unofficially earlier when he addressed the letter dated 13.11.1987. In any case, his letter withdrawing the earlier notice of voluntary retirement was sent well before the date from which his retirement was to be effective, that is, well before 22.12.1987. The proviso to Rule 48A(4) requires that a request for withdrawal shall be made before the intended date of retirement under the said rule. No doubt a person who had given notice of voluntary retirement to the appointing authority is precluded from withdrawing his notice except with the specific approval of the authority. But when he seeks permission to withdraw the notice and his request for withdrawal is made before the

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intended date of his retirement, the appointing authority cannot withhold approval to the request unreasonably. The authority cannot act arbitrarily and reject the request without proper reason. Moreover, the applicant had explained why he was withdrawing his earlier notice. He had stated that he had given the notice under conditions of stress and so wanted to withdraw it. The appointing authority had rejected his request for withdrawal without assigning any <sup>any had learnt</sup> reason whatsoever. The applicant understood that his request had been rejected only because the authority concerned thought that it would be a good riddance if he retired. But, that was no reason to reject his request. Dr.Nagaraja relied on the decision of the Supreme Court in BALRAM GUPTA V. UNION OF INDIA - AIR 1987 SC 2354 as also the earlier decision of the Supreme Court in AIR 1978 SC 694 UNION OF INDIA V. GOPAL CHANDER MISHRA.

3. Shri M.S. Padmarajaiah, learned counsel for the Respondents strongly resisted the contentions of Dr.Nagaraja. Drawing our attention to Rule 48A(4) of the CCS (Pension) Rules, 1972, Shri Padmarajaiah pointed out that ordinarily a notice of voluntary retirement cannot be withdrawn except with the specific approval of <sup>by the competent</sup> authority. The proviso which requires that the request for withdrawal shall be made before the intended date of retirement should not be read in isolation. What was sought to be withdrawn was the notice of voluntary retirement. Once the notice was accepted it can no longer be said to be pending as a notice

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to be withdrawn by the Government servant thereafter.

Therefore, a notice of voluntary retirement can be withdrawn only before it was accepted and not after. The intended date of retirement was no doubt the outer limit of time by which a request for withdrawal should be made, but that did not mean that the request could be made after the notice of voluntary retirement had been accepted by the competent authority. If the competent authority does not act on the notice of retirement, then and only then, does the outer limit of time set by the intended date of retirement become operative. Drawing an analogy from the law of contracts, Shri Padmaraiah submitted that an offer remains an offer only till it is accepted and once it is accepted it ceases to be an offer and cannot be withdrawn. In this case, the notice of voluntary retirement given by the applicant was accepted by the Respondent 1 by his order dated 30.10.1987 and the applicant was aware of it when he wrote the letter dated 13.11.1987 seeking to withdraw his earlier notice. If the official communication of acceptance of his notice of voluntary retirement was made only on 19.11.1987 it could be because the applicant was not available for service earlier or might have deliberately avoided receiving it earlier. So long as the applicant himself knew that his notice of voluntary retirement had been accepted, effective communication had in fact been made to him. It was clear from the first sentence of the applicant's letter of withdrawal dated 13.11.1987 that he was already aware of the acceptance of his earlier notice. He was, therefore, precluded from

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withdrawing his earlier notice of voluntary retirement on 13.11.1987 and the Respondents had rightly rejected his request for withdrawal. The Respondents had rejected the application for withdrawal on the ground that it would be a good riddance if the applicant retired and that was sufficient reason for doing so. Even if it were not considered to be a relevant reason this Tribunal cannot straightaway direct the Respondents to accept the applicant's request for withdrawal and to take him back to service. The most that this Tribunal could do was to direct the Respondents to consider the applicant's request for withdrawal of his earlier notice of voluntary retirement afresh and to come to a reasoned decision one way or the other thereon. In short, Shri Padmarajaiah's contention was that the applicant's application should be dismissed or the respondents should be directed to consider the question of the applicant's withdrawal of his earlier notice of voluntary retirement afresh and pass an order thereon with valid reasons.

4. We have considered the rival contentions carefully. The first point at issue is whether the applicant made the request for withdrawal of his notice of voluntary retirement within the time stipulated in the proviso to Rule 48A(4) of the CCS (Pension) Rules, 1972. On this point it would be useful to extract Rule 48A to the extent it is relevant for the purpose of this application. This is how the relevant portion of the rule reads:-

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"48-A. Retirement on completion of 20 years' qualifying service

(1) At any time after a Government servant has completed twenty years' qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority, retire from service.

(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority:

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

(3) Deleted

(3A) (a) ...

(b) ...

(4) A Government servant who has elected to retire under this rule and has given the necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority:

Provided that the request for withdrawal shall be made before the intended date of his retirement."

The proviso to Sub-rule (4) requires that the request for withdrawal shall be made before the intended date of retirement. So far as we can see this is the only limit of time prescribed for the purpose. Shri Padmarajaiah would have us read into the proviso something more than what the plain words state. If the intention was that the request for withdrawal should be made before the notice of voluntary retirement is accepted the proviso itself would have said so. The proviso would then have read somewhat as follows: "provided that the request for

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withdrawal shall be made before the acceptance of the notice given by the Government servant or the intended date of retirement whichever is earlier". In the absence of a specific limitation of the kind suggested by Shri Padmarajaiah we are unable to agree with him that the notice of withdrawal given by the applicant in the present case before the intended date of his retirement was beyond the time limit prescribed in the proviso.

5. At this stage, it would be useful to refer to the judgment of the Supreme Court in Gopal Chander Mishta's case AIR 1978 SC 694. In that case a Judge of the Allahabad High Court gave notice by letter dated 7.5.1977 that he would resign from his office with effect from 1.8.1977. He revoked this communication by a subsequent letter dated 15.7.1977. The question was whether he could thus withdraw his earlier notice of resignation. Under proviso (a) to Article 217(1) of the Constitution, "a judge may, by writing under his hand addressed to the President, resign his office." There is no need in his case for the resignation to be accepted by the President. Once he sends in his resignation, the resignation takes effect from the date mentioned in his letter. It was, therefore, contended before the Supreme Court that the Judge having communicated to the President of India in accordance with Article 217(1) proviso (a) his intention to resign with effect from 1.8.1977, the resignation was final and irrevocable and he could not withdraw the same before the date of intended resignation. The Supreme Court held that "resigning office necessarily involves relinquishment of the office which

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implied cessation or termination of, or cutting assunder from the office... "(See para 10 of the Judgment in Balram Gupta's case paraphrasing the judgment in Gopal Chander Mishra's case). The Court also observed that in the absence of a legal, contractual or constitutional bar, a notice of intention to resign from a post from a future specified date can be withdrawn at any time before it became effective ie., before it effects termination of the tenure of the office/post or employment. "This general rule", as explained by their Lordships in Balram Gupta's case at page 2358 of the report, "equally applies to Government servants and constitutional functionaries". Deriving from the same decision, we find the following observation in Balram Gupta's case (AIR 1987 SC 2354) at page 2358: "On the principles of general law the offer to relinquishment could have been withdrawn by the appellant before the date it became effective if sub-rule (4) of Rule 48-A was not there". From this it is clear that the principle laid down in Gopal Chander Mishra's case was that an intimation to resign or retire from a future date can be withdrawn before such date. To be more specific the withdrawal can be made at any time before the relationship of master and servant is severed ie., before the retirement or resignation actually would take effect in terms of the intimation. It is in this background that we should read the proviso to sub-rule 4 of Rule 48A and if we do so, only one conclusion is possible, ie., that a notice of voluntary retirement can be withdrawn at any time before the intended date of retirement irrespective of whether the notice of retirement had been accepted or not by the competent authority in the meanwhile.

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6. The facts in Balram Gupta's case are in all respects pari materia with the facts of this case. There the notice of voluntary retirement was sought to be withdrawn before the retirement was to take effect but after the notice of retirement had been accepted by the competent authority. Referring specifically to Rule 48A of CCS (Pension) Rules, the court observed that till the date his retirement became effective the appellant therein continued to be a Government employee. There was no unilateral termination of this relationship prior to that date. He was, therefore, at liberty and entitled independently without sub-rule 4 of Rule 48A of the Pension rules, as a Government servant, to withdraw his notice of voluntary retirement. Applying the ruling in Balram Gupta's case on we must hold that the application/13.11.1987 was well within the time limit prescribed therefor ie., the date of his intended retirement, irrespective of whether his earlier notice had been accepted or not in the meanwhile.

7. We now come to the question as to whether the Respondents rightly rejected the request of the applicant to withdraw his notice of voluntary retirement. No doubt a notice of voluntary retirement cannot be withdrawn except with the specific approval of the competent authority. This does not mean that Government can reject a request for withdrawal arbitrarily. In Balram Gupta's case, the Supreme Court referred to the prohibition in sub-rule 4 of Rule 48A against making a request for withdrawal without

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approval from the competent authority and observed that if the power conferred on the government was properly exercised, it would be a salutary rule. Their Lordships observed further, that "approval, however, is not ipso dixit of the approving authority. The approving authority who has a statutory authority must act reasonably and rationally. The only reason put forward here is that the appellant had not indicated his reasons for withdrawal. This, in our opinion, was sufficiently indicated that he was prevailed upon by his friends and the appellant had a second look at the matter". Applying this test we find that in this case the applicant had explained that he had submitted the notice of voluntary retirement earlier under compelling circumstances and had later decided not to proceed on voluntary retirement. "In the modern age", as observed in Balram Gupta's case "we should not put an embargo on people's choice or freedom". It was not as if the Respondents had made arrangements to fill up the vacancy caused by the applicant's notice of retirement and that compelled them to reject his request for withdrawal. As we have earlier noticed, the Collector of Central Excise merely observed that it would be a good riddance if the applicant were allowed to retire. In our opinion this was not a proper reason to reject the applicant's request for withdrawal of his notice. Once again we quote from the judgment in Balram Gupta's case: "the court cannot but condemn circuitous ways 'to ease out' uncomfortable employees."

We are, therefore, of the view that the Respondents have acted arbitrarily in rejecting the applicant's request for withdrawal of his notice of voluntary retirement.

8. We are unable to agree with the suggestion of Shri Padmaraiah that we should send the matter back to the competent authority if we hold that the reason given by him for rejecting the request for withdrawal was not proper. The fact is that the competent authority did once consider the applicant's request for withdrawal of his notice and decided to reject it but in our view, there was no justification for the rejection. There is no point in sending the matter back to the same authority to consider the matter once again. If the authority sticks to his earlier decision, the applicant will be obliged to come back to this Tribunal. We find no justification for prolonging the agony of the applicant and keeping the possibility of further litigation alive.

9. In the view we have taken of the matter we set aside the order dated 18.12.1987 of the Respondents rejecting the applicant's request for withdrawal of his notice of voluntary retirement and direct the Respondents to give the applicant a posting forthwith and in any case not later than 1.7.1988. The order dated 30.10.1987 accepting the applicant's notice of voluntary retirement and according him permission to retire with effect from 22.12.1987 will also stand cancelled in view of this order.

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10. In the result we pass the following orders:-

- (i) The order dated 18.12.1987 passed by Respondent 1 rejecting the applicant's request for withdrawal of his notice for voluntary retirement is set aside. Order of Respondent 1 dated 30.10.1987 accepting the notice of voluntary retirement given by the applicant and permitting him to retire from service with effect from 22.12.1987 also stands cancelled.
- (ii) Respondents will give the applicant a posting as early as possible and not later than 1.7.1988.
- (iii) The applicant shall be deemed to have been in service continuously from 22.12.1987 onwards with no break of service and will be entitled to all consequential financial benefits. Arrears of pay and allowances from 22.12.1987 should be paid to the applicant within three months from today.

11. The application is allowed. Parties to bear their own costs.

Sd/-

VICE CHAIRMAN (1988)

Sd/-

MEMBER (A) 10/6/88

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SECTION OFFICER  
CENTRAL ADMINISTRATIVE TRIBUNAL  
ADDITIONAL BENCH  
BANGALORE