

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI -5

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDERS SHEET

1. Original Application No. 253/07
2. Mise Petition No. /
3. Contempt Petition No. /
4. Review Application No. /

Applicant(s) Ignatius Honsdak -vs- Union of India & Ors

Advocate for the Applicants:- M. Chanda, S. Nath, K. L. Dutta

Advocate for the Respondents:- Railway advocate

Notes of the Registry	Date	Order of the Tribunal
1. application is in form, is filed/C. F. for Rs. 50/- disposed vide IPO/BD No. 346, 654189 Dated 22.6.07	18.9.2007 bb/	Post on 19.9.2007 Vice-Chairman
2. Registrar	19.9.07.	Judgment delivered in open Court. Kept in separate sheets. Application is dismissed. No costs. Vice-Chairman
Petition's copy for issue notice one received without enveloped. Copy served.	1m	Judgment delivered in open Court. Kept in separate sheets. Application is disposed of. No costs. Vice-Chairman
(See) ^{rw} 29/9/07 28/9/07	1m	Vice-Chairman

Order
for
Leave
for Appellate
28/9/07

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. No. 253 of 2007

DATE OF DECISION: 19.09.2007

Ignatius Hansdak

.....Applicant/s

Mr. M. Chanda

..... Advocate for the
Applicant/s.

- Versus -

U.O.I. & Ors

.....Respondent/s

Dr.J.L.Sarkar

..... Advocate for the
Respondents

CORAM

THE HON'BLE MR. K.V. SACHIDANANDAN, VICE CHAIRMAN

1. Whether reporters of local newspapers may be allowed to see the Judgment? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No
3. Whether to be forwarded for including in the Digest Being compiled at Jodhpur Bench & other Benches ? Yes/No
4. Whether their Lordships wish to see the fair copy of the Judgment? Yes/No

Vice-Chairman

21/9/07

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No.253 of 2007

Date of Order: This the 19th Day of September, 2007.

HON'BLE MR. K. V. SACHIDANANDAN, VICE-CHAIRMAN

Ignatius Hansdak
S/O Shri Manick Chand Hanbsdak. | Applicant

By Advocate, Mr.M.Chanda,
Mr.S.Nath, Ms.U.Dutta.

-Versus-

1. Union of India, represented by General Manager, N.F.Railway, Maligaon, Guwahati-11.
2. Secretary, Railway Board, Rail Bhawan (Ministry of Railways) New Delhi.
3. Deputy Chief Personnel Officer (Gazetted) N.F.Railway, Maligaon
4. Rail Bhawan
Ministry of Railways
New Delhi
Through Respondent No.2

By Advocate Dr.J.L.Sarkar, Railway advocate.

ORDER (ORAL)

K. V. SACHIDANANDAN, V.C:

The applicant was working as Deputy Chief Mechanical Engineer in the N.F.Railway, in Grade - A Service in the Indian Railways. He submitted application dated 20.01.2003 (Annexure-“A”) for voluntary retirement with effect from 01.05.2003 (FN) for personal reasons. Thereafter, he wanted to withdraw his voluntary

retirement and submitted application dated 21.04.03 (Annexure B) requesting for acceptance of the withdrawal. According to the applicant, the applicant has a right to withdraw the voluntary retirement before 01.05.2003 but the respondent without accepting the withdrawal issued a letter dated 22.04.2003 (Annexure-D) the claim of the applicant was rejected and acted upon originally, an employee who wishes to withdraw his notice for voluntary retirement before expiry of the prescribed three months period should indicate clearly his request the circumstances for withdrawing the same. The Respondents has issued Memorandum dated 21/22.04.2003 (Annexure F) stating that the Railway Board by letter dated 17.04.2003 (Annexure -G) accepted the voluntary retirement with effect from 30.04.2003. By letter dated 24.04.2003 (Annexure H) G.M./.N, F. Railway recommended to Railway Board to process the withdrawal of the voluntary retirement. The applicant received letter dated 27.5.2003 (Annexure-I) with which copy of the Railway Board's letter dated 26.5.03(Annexure-I) rejecting the withdrawal of voluntary retirement of applicant. Applicant resumed his duties up to 26.5.2003. The applicant submitted number of representations dated 24.3.2005 (Annexure-N) and 04.052005 (Annexure-O) to the Minister for Railways and the Railway Board has issued letter dated 31.08.2005 (Annexure-P) in suppression of earlier decision in order dated 26.5.2003 and accepted the

withdrawal of voluntary retirement to reinstate the applicant in service from the date her resumes duty, stating on grounds of mercy. The applicant submitted letter dated 26.10.2005 (Annexure-Q) praying for resuming his duty. But unfortunately the Railway Board issued letter dated 12.01.2006 (Annexure R) by which letter dated 31.08.2005 was modified that the total FS/Pension received by the applicant shall have to be refunded in lump sum with interest before joining and the period of absence shall be treated as "dies non". The applicant submitted letter dated 9.3.2006 to allow him to pay 50% before joining and balance within 2 years in installments. But the Railway Board has not accepted to relax the conditions. The applicant states that his present financial condition after lapse of time shall not permit him to deposit 50% of FS/Pension as stated earlier because he has not received pay & allowances for a long period and had to meet the family expenses of higher education of children.. Aggrieved by the certain action of the Respondents the applicant has filed this O.A. seeking the relief.

2. I have heard Mr.M.Chanda learned counsel for the applicant and Dr.J.L.Sarkar learned Railway Counsel for the Respondents. Counsel for the applicant has submitted that though there are many prayers in the O.A., the main prayer of the applicant is that his service shall be treated as continuous and not reinstatement from



date of resuming duty and he may be allowed to pay 50% of the amount before joining and rest 50% plus the accrued interest within two years of installments. The counsel for the respondents has submitted that he has no objection, if this will meet ends of justice. The Railway Board has sent letter to the General Manager, N.F.Railway dated 31.08.2005, Application for withdrawal of notice for voluntary retirement from service of the applicant is reproduced below:-

"The petitions dated 24.03.2005 and 04.05.2005 submitted by Shri I. Hansdak, Ex. Dy. CME/WS/MLG, N.F.Railway requesting for reconsideration of the earlier decision of the President contained in this Ministry's letter of even number dated 26.05.2003 rejecting his earlier request dated 22.04.2003 seeking withdrawal of the notice dated 20.01.2003 for voluntary retirement from service w.e.f.01.05.2003, have been examined. The President, on reconsideration has decided, as a very special case on the grounds of mercy, to accept the request dated 22.04.2003 of the said Shri. Hansdak and to reinstate him in service with effect from the date on which he resumes duty.

This issues in suppression of the aforesaid earlier decision dated 26.05.2003.

It is presumed that retirement dues of Shri Hansdak would have already been released to him. If so, the same would have to be realized back from him by the Railway Administration in accordance with the relevant provisions contained in the Railway Services (Pension) Rules, 1993. This may kindly be ensured by the Railway.

This implementation of the above order may kindly be advised to his office at the earliest."

3. Considering the facts and circumstances, this Court directs the applicant that the 50% amount 15,81,648/-Rs as shown in (Annexure -S) dated 17.02.2006 will be deposited within four weeks from the date of receipt of this order and after depositing the said amount the respondents shall reinstate the applicant in service within four weeks thereafter. It is made clear that the respondents are at liberty to recover any further amount from the salary of the applicant or otherwise by a separate order. Since, there are so many prayers in the O.A. this Court further directs that the applicant shall make comprehensive representation for his grievances before the Respondents and on receipt of such representation the respondents shall consider and dispose of the same accordingly.

4. O.A. is disposed of accordingly, at the admission stage itself and there shall be no order as to costs.



(K.V. SACHIDANANDAN)
VICE-CHAIRMAN

LM

14 SEP 2003

In the Central Administrative Tribunal
Guwahati Bench
Guwahati Branch, Guwahati

O.A. No. 253/2007

Ignatius Hansdak,
S/o Shri Manick Chand Hansdak ...

--VS--

Union of India & Others

SYNOPSIS

The applicant was working as Deputy Chief Mechanical Engineer in the N. F. Railway, in Gr. 'A' Service in the Indian Railways. He submitted application dated 20.01.2003 (Annexure-'A') for voluntary retirement with effect from 01.05.2003 (FN) for personal reasons. He decided to withdraw his voluntary retirement and submitted application dated 21.04.03 (Annexure-'B') requesting for acceptance of the withdrawal. The applicant has a right to withdraw the voluntary retirement before 01.05.2003 but respondents without accepting the withdrawal issued letter dated 22.04.2003 (Annexure-'D') calling for detail circumstances. The applicant submitted the circumstances by letter dated 22.04.2003 (Annexure-'E'), that his wife was planning to set up business but with change of circumstances it was not considered financially viable to go for the business and therefore the applicant had to withdraw the voluntary retirement. Memorandum dated 21/22-04.2003 (Annexure-'F') was issued stating that the Railway Board by letter dated 17.04.2003 (Annexure-'G') accepted the voluntary retirement with effect from 30.04.2003 (AN). By letter dated 24.04.2003 (Annexure-'H') G.M. / N.F. Railway recommended to Railway Board to process the withdrawal of the voluntary retirement. Applicant received letter dated 27.5.2003 (Annexure-'I') with which copy of the Railway Board's letter dated 26.5.03 (Annexure-'J') was enclosed rejecting the withdrawal of voluntary retirement of applicant. Applicant discharged duties up to 26.5.2003 and also as Gr. 'A' officer received privilege pass on his requisition dated 08.05.2003 but was not paid pay & allowances from 1.5.2003.

The applicant submitted number of appeals but without any result. Thereafter he submitted application dated 24.3.2005 (**Annexure-'N'**) and 04.05.2005 (**Annexure-'O'**) to the Minister for Railways explaining discriminatory treatment. The Hon'ble Minister was pleased to appreciate the patent discrimination and injustice, and the Railway Board issued letter dated 31.08.2005 (**Annexure-'P'**) in supersession of earlier decision in order dated 26.5.2003 and accepted the withdrawal of voluntary retirement to reinstate the applicant in service from the date he resumes duty, stating on grounds of mercy. The applicant submitted letter dated 26.10.2005 (**Annexure-'Q'**) praying for joining duty. But most unfortunately Railway Board issued letter dated 12.01.2006 (**Annexure-'R'**) by which letter dated 31.08.2005 was modified adding new conditions that the total FS/ Pension received by the applicant shall have to be refunded in lumpsum with interest before joining and the period of absence shall be treated as '*dies non*'. The applicant submitted letter dated 20.2.2006 requesting to allow him to resume duty and amount of FS/ Pension may be recovered in installments. He also submitted letter dated 9.3.2006 to allow him to pay 50% before joining and balance within 2 years in installments. By letter dated 9.5.2006 (**Annexure-'X'**) the applicant was informed that Railway Board has not accepted to relax the conditions in their letter dated 12.01.2006. The applicant states that his present financial condition after lapse of time shall not permit him to deposit 50% of FS/ Pension as stated earlier because he has not received pay & allowances for a long period and had to meet the family expenses including expenses of higher education of children.

Applicant submits that he was entitled to withdraw voluntary retirement when employer-employee relation existed and as per the laws declared by the Hon'ble Supreme Court. He encloses 2 judgments for ready reference J. N. Srivastava VS. Union of India (1998 9 SCC 559) and S. M. Sinha VS. Project & Development India Ltd [JT 2002 (3) SC 37] (**Annexure-'Z'**). He prays for joining immediately and payment of arrear pay & allowances / adjustment with FS/pension received by him.

10/10/2018

In the Central Administrative Tribunal
Guwahati Branch: Guwahati

O.A. No 253/2007

Ignatius Hansdak,
S/o Shri Manick Chand Hansdak ...

--VS--

Union of India & Others

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*filed by the applicant
through S. N. Bhattacharya
17/09/07.*

**In the Central Administrative Tribunal
Guwahati Branch; Guwahati**

(An application under Section 19 of the Administrative Tribunal Act 1985)

O.A. No 253/2007

Ignatius Hansdak,
S/o Shri Manick Chand Hansdak ...

— Applicant

—VS—

1. Union of India, represented by
General Manager, N.F. Railway,
Maligaon, Guwahati-11.
2. Secretary, Railway Board,
Rail Bhawan (Ministry of Railways)
New Delhi.
3. Deputy Chief Personnel Officer (Gazetted)
N.F. Railway, Maligaon.
4. Railway Board
Rail Bhawan
Ministry of Railways
New Delhi.
Through Respondent No.-2

— Respondents

1. Particulars for which the application is made

The application is made for allowing the applicant to perform his duties after withdrawal of his voluntary retirement which has been accepted with illegal conditions added subsequent to the acceptance of the withdrawal, although, the withdrawal was made before the expiry of the notice period and covered by the laws laid down by the Hon'ble Supreme Court.

2. Jurisdiction

The applicant declares that the subject matter of the application is within the jurisdiction of this Hon'ble Tribunal.

3. Limitation

The applicant declares that the application is within the period of limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985.

4. Facts of the case:-

1. That, the applicant is a citizen of India and as such is entitled to the rights and privileges guaranteed by the Constitution of India. He belongs to ST category.
2. That, he is a member of the Group 'A' Service, Indian Railway Service of Mechanical Engineers (IRSME) 1982 batch. He was recruited as Special Class Railway Apprentice (SCRA), 1979 examination conducted by U.P.S.C. He joined as Assistant Mechanical Engineer Probationer, Gr. 'A' w.e.f. 08.03.1984, thereafter promoted to Senior Scale and further as Deputy Chief Mechanical Engineer (for short Dy CME). He has been working in the N.F. Railway.
3. That, while working as Dy CME/workshop (Selection Grade) N. F. Railway, he submitted an application dated 20.01.2003 to the Secretary, railway Board for voluntary retirement w.e.f. 01.05.2003. (FN) for personal reasons.

Copy of the application dated 20.01.2003 is enclosed as
Annexure—'A'

4. That, the applicant submitted application dated 21.04.2003 to the Secretary, Railway Board, stating that he has reconsidered and decided to withdraw his voluntary retirement and requested for acceptance of the withdrawal. The said letter dated 21.04.2003 was submitted through Deputy Chief Personnel Officer (Gaz) N. F. Railway, through CME/MLG, under the letter dated 21.04.2003.

Copies of the letters dated 21.4.2003 to Dy. CPO/Gazetted and Secretary Railway Board are enclosed as
Annexure— 'B' & 'C' respectively.

5. That, under the scheme of voluntary retirement, the official has to exercise his volition and opt for the voluntary retirement. He has the right to withdraw the volition and withdraw the option for voluntary retirement before the date of voluntary retirement which is 01.05.2003 (FN) in this case. But most unfortunately, the respondents without accepting the withdrawal of voluntary retirement issued letter dated 22.04.2003 from

Ignatius Handak

the office of the General Manager (P) N.F.Railway calling for detailed circumstances for withdrawing the same. It is stated that as already stated above the applicant has a right to withdraw the voluntary retirement before 01.05.2003 (FN) of his own volition and calling for circumstances/reasons by the respondents is uncalled for and extraneous. However, for expeditious formal acceptance of the withdrawal, the applicant immediately wrote letter dated 22.04.03 to the Dy C.P.O./Gaz, N.F.Railway showing reasons for his withdrawal, he explained that the voluntary retirement was given as his wife was planning to set up a business, by the earnings from which he expected to maintain the family. But, circumstances changed and it was not considered financially viable to go for the business and it became essential to continue in Railway service.

It is stated that in a social culture of the applicant in his society the applicant had a duty to stand by the wife's endeavour and help her. As a responsible officer and a servant of the Indian Railways he has his duties for the Railways also. He considered that it would not be worthy for him to be negligent for whole hearted service in his post while helping his wife in the business. Therefore, he decided to opt for voluntary retirement. When it was considered not viable to have the business by the wife, he convinced her not to insist on the same and give her consent to continue in service for the Railways.

It is stated that, when a student, he had a deep aspiration to serve the Indian Railways, and therefore had taken the risk of not going for degrees from academic institutions, but to avail the first scope of joining the Gr. 'A' Service of the Railways by the tough All India Competitive Examination conducted by the Union Public Service Commission viz., S.C.R.A. The wife of the applicant also appreciated the feeling of the applicant towards Railway Service and in the circumstances, the applicant submitted the withdrawal of the voluntary retirement before 01.05.2003. It is stated that the requirement of circumstances / reasons under Railway Board's letter dated 05.11.2001, is illegal and is not supported by law.

Copies of the letters dated 22.04.2003 from GM/ P's office and from the applicant are annexed as **Annexure— 'D' and 'E'** respectively.

Ignatius Hawaldak

6. That, the General Manager/ Personnel issued memorandum dated 21/22-04.2003 stating that Railway Board by their letter dated 17.04.2003 has accepted the voluntary retirement of the applicant from Railway Service w.e.f. 30.4.2003 (AN).

Copies of the memorandum dated 21/22.4.2003 and letter dated 17.4.2003 are enclosed as **Annexure—‘F’ & ‘G’** respectively.

7. That, the G.M. (P), N. F. Railway’s office by letter dated 24.4.2003 to the Secretary, Railway Board, forwarded the application of the withdrawal of voluntary retirement of the applicant. It has been stated that G.M./ N. F. Railway has recommended to process for withdrawing the request for voluntary retirement of the applicant. The Board was requested to communicate the decision before 30.04.2003. The copy of the said letter dated 24.4.2003 was endorsed to the applicant informing that if the acceptance of withdrawal was not received from Board within 30.04.2003, it will be presumed that the applicant has been voluntarily retired from service. It is stated that such hostile presumption is *nonest* and is not supported by any law.

Copy of the letter dated 24.4.2003 is enclosed as **Annexure—‘H’**

8. That, the applicant received letter dated 27.5.2003 under which copy of the Railway Board’s letter dated 26.5.2003 was sent to the applicant, rejecting the application for withdrawal of the voluntary retirement of the applicant. It is stated that the rejection of the withdrawal by the Railway Board/ President has been done with non-application of mind violating the legal position that applicant has a right to withdraw voluntary retirement before the date the retirement became effective. The applicant was in service of the Railways and had withdrawn the voluntary retirement on 21.4.2003 when employer and employee relationship subsisted. There was no scope of the Railway Board / President to reject the withdrawal of voluntary retirement. Moreover, the rejection was purportedly made on a hostile presumption that he had ‘disinclination for Railway Service’. Such decision is perverse. The applicant attended office and discharged duties even after 30.4.2003, up to 26.5.2003. He also received privilege pass which was issued to him in the capacity as Group ‘A’ officer against his requisition dated 08.05.2003 as such officer. He was, however, not paid pay and allowances during the period.

ignatius Jansank

Copy of the letter dated 27.5.2003 and order dated 26.5.2003 are enclosed as **Annexure-'I' & 'J'** respectively.

9. That, the applicant submitted appeal dated 07.07.2003 to the President of India against the rejection of withdrawal of voluntary retirement, copy of the said appeal was sent to Secretary, Railway Board, and Chairman, National Commission for SC & ST. The said appeal was followed by reminder dated 21.8.2003 to the President of India in which he had pointed out that the withdrawal of voluntary retirement of one Shri Indra Ghosh was accepted on a later date which shows that the power was exercised selectively. Most unfortunately the appeals remained unconsidered without any reply.

Copies of the appeal dated 07.7.2003 and 21.8.2003 are enclosed as **Annexure—'K' & 'L'** respectively.

10. That, the applicant also submitted an application dated 9.10.2003 to the Secretary, Railway Board, praying for a decision in a reasonable time period but without any reply.

Copy of the letter dated 9.10.2003 is enclosed as **Annexure—'M'**.

11. That, the applicant found that illegality was continuing and though under the laws, he continued to be in service but was not allowed to work for illegal and arbitrary decision of the respondents, he preferred an application dated 24.03.2005 to the Minister of Railways who is the Constitutional Executive Head of the Railway Ministry, briefly narrating his application. This was followed by another application dated 04.05.2005 to the Minister of Railways. In the application dated 04.05.2005,, he again mentioned the case of Shri Indra Ghosh, then posted at Railway Board, whose withdrawal was accepted after initial rejection but respondents acted in a preconceived and biased manner against the applicant. He also narrated that cases of withdrawal of notice for voluntary retirement are many in the Railways and quoted the then recent case of Shri B.K. Biswas, Dy CME/ N. F. Railway whose withdrawal of voluntary retirement was accepted.

Ignatius Fernandez

It is stated that the treatment towards the applicant was discriminatory and violation of laws of equality under articles 14 and 16 is patent. The case of the applicant is that after the withdrawal of the voluntary retirement he has been legally in the service of the Railways, but due to the whimsical and discriminatory attitude of the respondents he was not allowed to work in his office in the Railways.

Copies of the applications dated 24.03.2005 and 04.05.2005 are enclosed as **Annexure—‘N’ & ‘O’** respectively.

12. That, the Hon’ble Railway Minister was pleased to appreciate the patent discrimination and injustice caused to the applicant and consequently Railway Board issued letter dated 31.08.2005 in supersession of its earlier decision in order dated 26.05.2003. It is stated that the word “suppression” in the letter dated 31.08.2005 is considered to be a typographical mistake which the applicant reads as supersession. By this letter dated 31.08.2005 it has been decided to accept the withdrawal of the voluntary retirement and to reinstate the applicant in service with effect from the date on which he resumes duty.

It is stated that in this letter dated 31.08.2005 the decision has been said to be on the ground of mercy. At the same time, it is patent from the contents of the letter that the decision to reinstate has been made after the case has been examined. The applicant submits that the examination of the case, consequent upon the representation to the Railway Minister, revealed that the withdrawal of the voluntary retirement by the applicant was legitimate and valid as per the laws laid down by the Hon’ble Supreme Court, and on application of Board’s instruction equally to all employees, including the applicant, i.e. without discrimination.

It is stated that the decision in the letter dated 31.08.2005 was not a result of mercy but effect of enforcement of law. The reinstatement from the date of resuming is illegal decision. After acceptance of withdrawal of voluntary retirement the applicant’s service shall be continuous.

Copies of the letter dated 31.08.2005 is enclosed as **Annexure-‘P’**.

13. That, the applicant submitted a letter dated 26.10.2005 to the Secretary, Railway Board, praying for necessary orders for his joining duty. He also stated that he

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Signature
Name

was agreeable to return the money received as Final Settlement/ Pension. In the letter, he explained that he had to accept the FS and Pension after initial refusal, to sustain the family and meet other compulsions and higher education of the children. But no order was issued.

Copy of the letter dated 26.10.2005 is enclosed as Annexure—‘Q’.

14. That, the respondents were very much annoyed with the applicant for his representations to the Hon’ble Railway Minister consequent upon which the withdrawal of voluntary retirement was accepted. As a result of such annoyance, the respondents continued to harass the applicant by not allowing him to resume duty and work. Thereafter, letter of even No. dated 12.01.2006 was issued by the Railway Board, to the General Manager, N.F. Railway, by which the Board’s letter dated 31.8.2005 has been modified and conditions have been imposed that pensionary benefits received by the applicant shall have to be refunded in lumpsum and that the period between the date the applicant stood voluntarily retired and the date on which he is finally reinstated after fulfilling the conditions shall be treated as ‘*dies non*’. The said letter dated 12.12.1.2006 was delivered to the applicant under letter dated 17.02.2006 from the office of the G.M. / N. F. Railway asking the applicant to deposit **Rs. 15,81,648.00** indicating that the case for reinstatement will be considered after fulfillment of above conditions.

The applicant begs to state that he has withdrawn his voluntary retirement and continued to be in service and was ready for work and the respondents deliberately did not allow him to work, arbitrarily and even after order of reinstatement by letter dated 31.8.2005 respondents have not been allowing the applicant to resume duties and imposed conditions by letter dated 12.01.2006. It is stated that the conditions (a) and (b) are not justified and lawful.

Copies of the letters dated 12.1.2006 and 17.2.2006 are enclosed as Annexure—‘R’ & ‘S’ respectively.

15. That, the applicant submitted a letter dated 20.02.2006 to the Secretary, Railway Board requesting that he may be allowed to resume office and the amount of FS/ Pension shall be repaid in the monthly instalments of Rs. 10,000.00 (Rupees ten

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Jnmalin Jhawalkar

thousand only) which could be increased later, he would make effort to repay the same by making part lumpsum payment also. The said letter was sent to the Railway Board under GM/P's letter dated 20.2.2006.

Copies of the letters dated 20.2.2006 of the GM/P and the applicant are enclosed as **Annexure—'T' & 'U'** respectively.

16. That, the applicant was not allowed to resume duty. He wrote another letter dated 09.03.2006, to the Secretary, Railway Board, requesting that he may be allowed to pay 50% of the amount before joining and rest 50% plus the accrued interest within two years of reinstatement. He has also submitted similar application dated 9.3.2006 to the Railway Minister.

The respondents were so annoyed with the applicant that even after the applicant's above letter they did not allow him to join duty. It is stated that the applicant under very compelling circumstances got assurances from well wishers and relatives to have loans to enable him to resume duty. But the negative attitude of the respondents has cast a doubt in the minds of the said relatives and well wishers who have now become hesitant to help him with loan. On the other hand due to non-receipt of pay and allowances, the applicant had to spent the money in hand towards family needs including education of the children. It is stated that one cousin brother (whose parents are dead) is fully dependent on the applicant. His educational expenses (Engineering) are also borne by the applicant. In the circumstances, he is not in a position now to pay any lumpsum amount before joining duty. The amount may be recovered by the respondents from the salary bills after joining. It is stated that this situation has been caused by the illegal action of the respondents and for this the applicant should not be made to suffer.

Copies of the letters dated 09.3.2006 of the GM/P and the applicant are enclosed as **Annexure—'V' & 'W'** respectively.

17. That, under letter dated 9.5.2006 issued by the GM/P's Maligaon office, the applicant has been informed that the Railway Board have not accepted the request for relaxing the condition in Board's letter dated 12.01.2006.

Copy of the letter dated 09.05.2006 is enclosed as **Annexure—'X'**.

Ignatius Glanselak

18. That, the applicant begs to state that in the circumstances explained above, he has been continuing in service and ready to work but by whimsical and arbitrary action, he is not being allowed to work, and is being denied pay & allowances. Such a denial is arbitrary and illegal. He has been suffering consequent loss of First Class 'A' Passes, Privilege Ticket Orders, Free Air Travel as per rule and benefit of Railway Bangalow.

19. That the Railway Board has issued circular dated 05.11.2001 on the voluntary retirement. The Board's circular contains reference to Hon'ble Supreme Court's judgment. And Para 3(I) states as under :-

Signature of Plaintiff

" (I) An employee who wishes to withdraw his/her notice for voluntary retirement, before expiry of the prescribed three month period should indicate clearly in his/her request the circumstances/ reasons for withdrawing the same."

It is humbly submitted that making the submission of circumstances/ reasons mandatory is not legal. Such condition is not in the light of the judgments mentioned in the said circular dated 05.11.2001. This clause 3(I) of the said circular is liable to be set aside and quashed.

Copy of the Railway Board's circular dated
05.11.2001 is enclosed as Annexure— 'Y'.

20. That for ready reference the applicant encloses copies of the judgments in J.N. Srivastava -VS- Union of India and others, S.M. Sinha -VS- Project and Development India Ltd on the subject.

Copies of the above judgments are enclosed
and both marked as Annexure— 'Z'.

21. That the application is made bonafide and for cause of justice.

5. Grounds and legal provisions

5.1. For that the respondents had illegally rejected the withdrawal of voluntary retirement.

5.2. For that the respondents made undue delay in realizing the legal provision and thereafter accepted the withdrawal. The condition of reinstatement from date

of joining is illegal.

- 5.3. For that after acceptance of the withdrawal also, the respondents started harassing the applicant by giving illegal conditions before joining and did not allow the applicant to join, and have not allowed even today, causing loss of Privilege Passes, P.T.O's, Free Air Travel as per rule and Railway Bangalow
- 5.4. For that the respondents disregarded the laws laid down by the Hon'ble Supreme Court that withdrawal of voluntary retirement shall have to be accepted when it is made during the period when employer-employee relation exists.
- 5.5. For that the applicant has been denied pay and allowances, did not allow him to work, even though he was always ready to join and work.
- 5.6. For the respondents allowed others to withdraw voluntary retirement and allowed to join but has been hostile towards the applicant. This is violative of Articles 14, 16 and 21 of the Constitution of India.
- 5.7. For that the applicant is entitled to the reliefs prayed for under the laws declared by the Apex Court in a number of cases, and negligence of such laws is contemptuous of the Hon'ble Court and process of law. Treating the period, when he was not allowed to join and work, as *dies non* is illegal.

6. Details of remedies exhausted

The applicant declares that he has exhausted all the remedies available and there is no other remedy except this Hon'ble Tribunal.

7. Matter not pending any other court /Tribunal

The applicant declares that he has not filed any other case/ application before any other Court / Tribunal and the case is not pending in any Court /Tribunal.

8. Under the circumstances the applicant prays for the following reliefs :-

- 8.1. The applicant shall be allowed to join duty immediately.
- 8.2. That the conditions given by the respondents in letter dated 12.1.2006 (Annex-R) be set aside and quashed. The letter dated 17.2.2006 issued by G.M./P, N.F. Railway (Annexure—S) also be quashed.
- 8.3. The ground that the case of the applicant has been considered on mercy as said

Signature of Plaintiff

in letter dated 31.8.2005 (Annexure—P) be set aside and quashed. His service shall be treated as continuous and not reinstatement from date of resuming duty.

8.4. The applicant be paid pay and allowances w.e.f. 01.05.2003 till date of joining with interest on the amount. The entire period be treated as on duty and the order for treating as '*dies non*' be set aside and quashed, and loss of Privilege Passes , PTOs, Free Air Travel be compensated by money reasonably.

8.5. The requirement of circumstances /reasons for voluntary retirement in Para-3(I) in Railway Board's letter dated 05.11.2001 (Annexure—Y) be set aside and quashed.

8.6. Any other relief / reliefs the Hon'ble Tribunal is pleased to grant.

8.7. Cost of the case

The above reliefs are prayed for on the grounds stated in Para-5 above.

9.0. Interim reliefs prayed for

During the pendency of the application, the applicant prays for the following reliefs:-

9.1. The applicant shall be allowed to join duty immediately.

9.2. Recovery may be made from the salary bills towards the payment of FS money received by him.

9.3. Payment may be made towards pay and allowances during the period from 1.5.2003 and adjustment made against the money received by the applicant as Final Settlement, and Privileges Passes , PTOs, Air Travel cost be paid.

The above interim reliefs are prayed for on the grounds stated in Para 5 above.

10. The application is filed through Advocate

11. Particulars of I.P.O.

IPO NO:- 346654189

Date:- 02.07.2007

Issued from: G.P.O. Guwahati

Payable at GPO / Guwahati

12. List of enclosures

As per Index

Ignatius Hawaok

VERIFICATION

I, Ignatius Hansdak, aged about 47 years, son of Shri Manick Chand Hansdak, a resident of Pudumburi, Guwahati, Kamrup, Assam, do hereby verify that the statements made in Paragraphs 1, 4, 6 to 12 are true to my personal knowledge and those made in Paragraphs 2, 3 and 5 are believed to be true on legal advice and that I have not suppressed any material facts.

Guwahati,

17th of September, 2007.

Ignatius Hansdak

Signature

ANNEXURE-A

-13-

To,
Secretary,
Railway Board,
New Delhi-1

Dated:- 20-01-2003

Through: Proper Channel

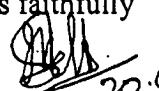
Respected Sir,

Sub:- Option for Voluntary Retirement with effect from 01.05.2003.

With due respect I inform your good office that I am opting for Voluntary Retirement with effect from 01.05.2003(FN) (i.e. 1st May 2003) due to personal reasons.

You are requested to accept the same and convey the letter of acceptance to the undersigned following all formalities.

Yours faithfully


20.01.2003
(I. Hansdak)
By CME/WS/MLG
N.F.Railway
Maligaon-781011



Affectionately
Yours
Respectfully

ANNEXURE - 'B'

-14-³³

No. IH/VR/Dy CME/WS

Dated 21.04.03

To:
Dy Chief Personnel Officer (Gaz),
N. F. Railway,
Maligaon

Through: CME/MLG

Subject:- Withdrawal of application for Voluntary Retirement of I.
Hansdak, Dy CME/WS

Reference:- My application No.IH/VR/DY CME/WS dt.20.1.2003

I am enclosing herewith the application for withdrawal of option for
Voluntary Retirement of self.

DA-1


21.04.03

I. Hansdak
Dy CME/WS

*Attest
Lal
Advocate*

ANNEXURE - 'C'

-15-
m/s

To
Secretary,
Railway Board
New Delhi-1

Dated-21.04.2003.

Through: Proper Channel

Respected Sir,

**Subject:- Withdrawal of option for Voluntary Retirement with effect from
01.05.2003.**

I have given option for Voluntary Retirement due to personal reasons vide my application dated 21.01.2003.

Now I have reconsidered and decided to withdraw my option for Voluntary Retirement. You are requested to consider my application and the request for withdrawal of option for voluntary retirement may kindly be accepted.

Yours faithfully


21.04.03
(I. Hansdak)
DY CME/WS
N. F. Railway,
Maligaon-781011

*Atul
Jain
Advocate*

ANNEXURE - 'D'

-16-5

N. F. Railway

Office of the
General Manager(P)
Maligaon, Guwahati-11

No.340E/1/278(O)

22 April, 2003

To
Shri I. Händak,
Dy.CME(WS),
N. F. Railway,
Maligaon.

Sub:- Withdrawal of application for Voluntary Retirement.

* * * *

In terms of Railway Board's letter No.E(P&A)I-2000/TR-9 dated 05-11-2001, an employee who wishes to withdraw his/her notice for voluntary retirement before expiry of the prescribed 3 months period should indicate clearly in his/her request the **circumstances/reasons** for withdrawing the same.

2 The application submitted by you does not mention the **circumstances/reasons** for withdrawing your application for voluntary retirement.

3 Before the case is forwarded to the competent authority (in your case the Railway Board), you are requested to give **detailed circumstances/reasons** for withdrawing the same so that the case is processed further.

VPS
22/4/03
(P. K. Singh)
Dy. Chief Personnel Officer(Gaz)
For General Manager (Personnel)

*Attn: Mr.
Advocate*

ANNEXURE - 'E'

-17-

To,

Dy. CPO/Gaz.
N. F. Railway, Maligaon

Dated, Maligaon, the 22nd Apr.~03

Sub : Withdrawal of my application for VRS
Ref : Your letter No. 340E/1/278(O) dated 22.04.2003

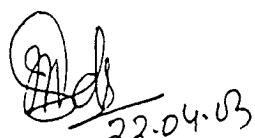
Vide my application of even number dated 21.4.03, I had conveyed that now I no longer desire to seek VRS from Railway services.

In reply, I have received your above letter dated 22.4.2003 asking me to give detail circumstances/reasons for my withdrawal of my application for VRS.

As desired the reasons based on which I now no longer want VRS are set out below.

- (i) When I had initially made application for VRS, my wife was planning to set up a business the earnings from which I expected to enable my family to eke out a livelihood.
- (ii) In this regards, the circumstances have changed and setting up her business is now no longer financially viable. So, we have not been able to generate the capital required in the business due to unforeseen circumstances.
- (iii) In view of the above, it is essential to continue in Railway services, vide my application referred above, and I withdraw my application of VRS from Railway service.

It is requested that Board may kindly be advised on priority regarding withdrawal of my application by FAX.


22.04.03
(I. Hansdak)
Dy. Chief Mechanical Engineer(WS)
N. F. Rly./ Maligaon

*W. H. S.
for
Advocate*

-18-
37

ANNEXURE-'F'

N.F.RAILWAY

MEMORANDUM

Railway Board vide their letter No. E(O)I-2003/SR-10/12 dated 17-04-2003 has accepted the request of Shri I Hansdak, (SG/IRSME) Dy.CME/WS/MLG for voluntary retirement from Railway service w.e.f. 30.04.2003(AN).

V.W.D
(P.K.SINGH)
Dy.CPO/GAZ
for GENERAL MANAGER (P).

No.340E/1/278 (O):

Maligaon, dated 21.04.2003.

Copy forwarded for information and necessary action to:-

1. CME, CWE, CME/Pig, CRSE, CMRE/RL & CYO.
2. CPRO, DGM(G)
3. PS to G.M.
4. FA & CAO/EGA, PN & PF/MLG.
5. EO/FS & *to be filled*
6. Shri I.Hansdak, Dy.CME/WS/MLG.

V.W.D
(P.K.SINGH)
21/4/03
For GENERAL MANAGER (P).

*After Action
SAC
Advocates*

ANNEXURE-G

-19-
38

BY FAX
FAX NO.0361-257124

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

No.E(O)-2003/SR-10/12

New Delhi, Date: 17.4.2003

The General Manager
North-East Frontier Railway
Majlighat

(Kind Attention Sh. P.K. Majlighat Dy.CPO/C)

Sub: Voluntary Retirement from service.
Sh. I. Hamsdak, Dy.CME/WS/MLG, N.E. Railway

Ref: N.E. Rly.'s letter No.340E/127B(O) dtgd 25/26.2.2003

The President has decided to accept the request dated 20.1.2003 of Sh. I. Hamsdak, IRSMIE, Dy.CME/WS/MLG, N.E. Railway (DOB 10.6.1960) for voluntary retirement from service w.e.f 30.4.2003 (A.N.)

MANOJ KUMAR SHARMA
(K.K.SHARMA)
JOINT SECRETARY (ESTT)
RAILWAY BOARD

Copy(s) to:

1. FA&CAO, N.E.Railway, Majlighat, Guwahati
2. Principal Director of Audit, N.E.Railway, Majlighat, Guwahati
3. Adviser (C), Railway Board
4. U.S.(D&A)-II, Railway Board
5. E(O)-II, Railway Board
6. E(O)-III, Railway Board

*After P
Sub. Advocate*

ANNEXURE - H
NORTHEAST FRONTIER RAILWAY

-20-

Office of the
General Manager(P)
Maligaon, Guwahati-11

39

No.340E/121/278(O)

24 April 2003

To
The Secretary,
Railway Board,
New Delhi-110001.

Kind attention:- Shri K. K. Sharma, JS(Estt.)

Sub:- Withdrawal of request for voluntary retirement –
Sri I. Hansdak, Dy.CME(WS)/N. F. Railway, Maligaon.

Ref:- (1) This Office letter No.340E/1/278(O) dtd.25/26-2-2003.

(2) Rly. Board's letter No.E(O)I-2003/SR-10/12 dtd.17-4-03.

With reference to letters quoted above, Shri I. Hansdak, Dy.CME(WS)/N. F. Railway, who had requested for voluntary retirement vide his application dated 21-1-2003 and which was accepted by the President, as communicated vide letter No.E(O)I-2003/SR-10/12 dated 17-4-2003 with effect from 30-4-2003 (AM), has submitted applications dated 22-4-2003, addressed to Secretary, Rly. Board and to the undersigned (copies enclosed) for withdrawal of his request for voluntary retirement.

GM/N. F. Railway has recommended to process for withdrawing the request for voluntary retirement of Shri Hansdak.

You are requested to kindly communicate the decision of the Railway Board before 30-4-2003 please.

Encl: As above

(P. K. Singh)
Dy. Chief Personnel Officer(Gaz)
For General Manager (P)

Copy to Shri I. Hansdak, Dy.CME(WS)/MLG. With reference to your letter as quoted above, it is stated that if the acceptance of withdrawal of your request for VR is not received from Railway Board by this office within 30-4-2003, it will be presumed that you have been voluntarily retired from service as per the memorandum issued vide this office Memorandum No.340/1/278(O) dtd.21-4-2003.

*V.W.S
21/4/03*
(P. K. Singh)
Dy. Chief Personnel Officer(Gaz)
For General Manager (P)

*Att. S.
Sub
Advocate*

ANNEXURE-'I'

-21-

N.F.RAILWAY

Office of the
General Manager (P),
Maligaon, Guwahati - 781011.

No. 340E/1/278(O)

Dated: 27-05-2003

To

Shri I. Hansdak,
Ex. Dy.CME/WS/N.F.Railway,
Bungalow No. 112, Nambari,
Guwahati - 781011.

Sub: Application for withdrawal of notice for voluntary
retirement from service : the case of Shri I. Hansdak,
Dy.CME/WS/MLG, N.F.Railway.

A copy of Railway Board's letter No. E(O)-I/2003/SR-10/12 dated 26-05-2003 along with a copy of the President of India's Order No. E(O)-I/2003/SR-10/12 dated 26-05-2003, rejecting your application dated 22-04-2003 for withdrawal of your notice for VR, is sent herewith for your information.

The receipt of this letter along with Board's letter dated 26-05-2003 and its enclosures, may please be acknowledged in the format sent herewith.

DA/As above.

27.5.03

(S.K.Chowdhury)
APO/Gaz.
For General Manager (P).

*Not read
Sark
Advent*

-22-

ANNEXURE - 'J'

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

No. E(O)-I/2003/SR-10/12

Dated : 26.05.2003

ORDER

Whereas Sh. I. Hansdak, IRSM(E), Dy.CME/WS MLC, N.E. Railway had submitted a notice dated 20.1.2003 seeking voluntary retirement from service w.e.f. 01.05.2003 (EN);

And, whereas, the President had approved the aforesaid request of the said Sh. I. Hansdak w.e.f. 30.4.2003 (AN) in accordance with the rules, the sanction whereof was issued vide letter of even number dated 17.04.2003;

And, whereas, the said Sh. I. Hansdak has now submitted an application dated 22.04.2003 requesting for withdrawal of his earlier notice dated 20.1.2003 for voluntary retirement from service;

Now, therefore, the President, the Appointing Authority, after careful consideration of aforesaid application dated 22.04.2003 of the said Sh. I. Hansdak, in the light of all the facts and circumstances relevant to the case, has taken the view as under:-

"Shri I. Hansdak, Selection Grade/IRSM(E), while posted as Deputy CME/N.E. Railway, Maligaon, had submitted a request dated 20.1.2003 seeking voluntary retirement from Railway service w.e.f. 1.5.2003 (EN) citing personal reasons. The request for voluntary retirement was considered and accepted by the competent authority. Orders accepting voluntary retirement from service w.e.f. 30.4.2003 (AN) were issued vide Railway Board's letter No. E(O)-I-2003/SR-10/12 dated 17.4.2003 and these have already become effective.

Shri Hansdak has subsequently made a request dated 22.4.2003 seeking withdrawal of his application for voluntary retirement. In the request for withdrawal Shri Hansdak has stated that when he initially made the application for voluntary retirement, his wife was planning to set up a business on whose earnings he expected his family to make a livelihood. However, because of change in circumstances, her business is no longer financially viable and his family has not been able to generate the required capital for business. He has further stated that because of these changes it has become essential for him to continue in Railway service.

hushamra

After
Lab. Advocate

The reasons cited by Shri Hansdak in the request for withdrawal of notice of voluntary retirement were not mentioned in the initial request dated 20.1.2003 where only "Personal reasons" were stated. Even the reasons now stated clearly bring out that Shri Hansdak had desired voluntary retirement to further his wife's business prospects and had least consideration or interest for Railway. Moreover, the request for voluntary retirement is supposed to be made by a Railway officer after cool deliberation and thought and not in a huff or on premature considerations. Shri Hansdak, by preferring his wife's business interest, has shown his disinclination for Railway service.

Considering all relevant factors, I am of the view that the request for withdrawal of notice of voluntary retirement made by Shri Hansdak is not justified and fit to be rejected. Accordingly, I hereby reject the request of Shri Hansdak for withdrawal of voluntary retirement."

Accordingly, the request dated 22.04.2003 of the said Shri L. Hansdak for withdrawal of his notice dated 20.01.2003 for voluntary retirement from service is hereby rejected.

The said Shri L. Hansdak is required to acknowledge receipt of this order in writing.

By order and in the name of the President.

lsharma

(K.K. SHARMA)
JOINT SECRETARY (ESTT)
RAILWAY BOARD

SHRI L.HANSDAK,
Dy.CME/WS/MLG,
N.F. Railway

-24-
12

ANNEXURE-K'

To:

Dr. A.P.J. Abdul Kalam,
President of India,
Rashtrapati Bhavan,
New Delhi

Dated-07.07.2003

Chairman,
National Commission for SC&ST
New Delhi - 1.

Most Hon'ble His Excellency,

Subject: - Appeal against rejection of application for withdrawal of Voluntary Retirement from Railway Service on 'irrational' and 'unreasonable' grounds:

With due regard, I, I. Hansdak, last working as Dy Chief Mechanical Engineer/WS at Northeast Frontier Railway Head Quarters, Maligaon, want to bring the following facts for your judicious consideration and orders: -

10. That Sir, I belong to the I.R.S.M.E. 1982 batch (S.C.A.'1979 batch) and was posted in this railway from the very beginning. I joined this railway as Asstt. Mechanical Engineer (Probationer) in the month of March'1984.
11. That Sir, I belong to Scheduled Tribe Community.
12. That Sir, I applied for voluntary retirement from railway service due to personal reasons w.e.f. 01.05.03 vide my application dated 20.01.2003, a copy enclosed at Annexure-I.
13. That Sir, I withdrew the application for voluntary retirement due to changed circumstances vide my applications dated 21.04.03 and 22.04.03. A copy each of the applications is placed at Annexure-II and Annexure-III. The application was forwarded to the Secretary, Railway Board by GM(P)/Maligaon, vide L.No. 340E/121/278(O) dated 24.04.2003. A copy of the letter of GM/P is placed at Annexure-IV.
- As per extant circulars available (a copy placed at Annexure-V) and as per para- 3 (i) and (ii) of this bd's circular, withdrawal of application of voluntary retirement is permissible within the stipulated period even after acceptance of the voluntary retirement.
14. That Sir, The application for voluntary retirement was accepted vide Bd's letter dated 17.04.03 and the memorandum of acceptance was issued by GM/P/MLG vide No. 340E/1/278(O) dated 21/22-04.03 and the same was handed over to me on 23.04.03. A copy of the letter is placed at Annexure-VI

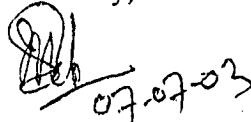
*After 1st
Jan. Acceptance*

15. That Sir, As per endorsement made on the copy of the letter at Annexure-IV, I was treated as retired w.e.f. 30.04.03 while the decision of the competent authority was awaited.
16. That Sir, I was verbally asked by Chief Mechanical Engineer/ Maligaon not to perform duty w.e.f. from 01.05.2003 till the order from railway board was received.
17. That Sir, The application for withdrawal of voluntary retirement was ultimately rejected by the competent authority vide GM(P)/MLG's L.No.340E/1/278(O) dated 27.05.2003 (Annexure-VII)m and Bd's letter No. E(O)-I/2003/SR-10/12 dated 26.05.03 (Annexure-VIII).
18. That Sir, I feel the rejection of withdrawal of application for voluntary retirement on the basis of interpretations of the para-3(iii) of Bd's circular (placed at Annexure-V) for rejecting an application for withdrawal of voluntary retirement has been done completely in an **unreasonable & irrational** manner, and justice has been denied to me. Details of the reasons for rejecting the application is given in Bd's letter placed at Annexure-VII.

It is my earnest prayer that my case may be looked into judiciously and natural justice may be imparted to me at the earliest.

Thanking you,

Yours faithfully,


07.07.03
(I. Hansdak)

Address:-

B. No-112, Nambari
Maligaon,
Distt:-Kamrup
Guwahati-781011
ASSAM

*Copy to :- Secretary, Railway Board,
New Delhi.*

ANNEXURE - 'L'

-26-
24

Dated-21.08.2003

To:

The President of India,
Rashtrapati Bhawan,
New Delhi,

His Excellency,

**Subject: - Appeal against Rejection of application for withdrawal of
Voluntary Retirement from Railway Service on 'irrational',
'unreasonable' and biased manner.**

Ref. :- My appeal dated 07.07.2003.

With due regard and in reference to my previous appeal referred above, I, I. Hansdak, last working as Dy Chief Mechanical Engineer/WS at Northeast Frontier Railway Head Quarters, Maligaon, want to further draw your kind attention towards the following facts for your judicious consideration and orders: -

1. That Sir, I am enclosing a copy of my previous appeal dated 07.07.2003 for details and ready reference.
2. That Sir, my application for withdrawal of voluntary retirement was not accepted by the competent authority along with Shri Indra Ghosh (then posted at Railway Board) who also applied for voluntary retirement and subsequently applied for withdrawing the application for voluntary retirement.
3. That Sir, it is learnt that the application for withdrawal of voluntary retirement of Shri Indra Ghosh was considered and accepted on a later date by the competent authority contravening the principle of natural justice.
4. That Sir, the rejection of my appeal for withdrawal of voluntary retirement and subsequent acceptance of appeal of Shri Indra Ghosh for withdrawal of voluntary retirement 'selectively' is completely arbitrary and irrational.
5. That Sir, this decision of the railways has caused enormous agony and anxiety to my family and me.
6. That Sir, It is my earnest prayer to look into the matter in detail and judicious actions may be taken promptly and expeditiously to redeem my losses of all types.

*Affest
Saty
Advocate*

I am hopeful that my appeal would not be a cry in the wilderness!

Thanking you,

DA: One

Yours faithfully,



(I. Hansdak)

Address:-

B. No-112, Nambari
Maligaon,
Distt:-Kamrup
Guwahati-781011
ASSAM

Dated-09.10.2003

To:
The Secretary,
Railway Board,
New Delhi

Subject: -Review of my appeal to withdraw my option for Voluntary Retirement from Railway Service.

Ref.: - (1) My appeal to withdraw application for voluntary retirement vide my applications dated 21.04.03 and 22.04.03 which was forwarded by GM(P), N. F. Railway , vide Dy CPO/MLG's L.No. 340E/121/278(O) dated 24.04.2003.

(2) Board's L/No. E(O)-I/2003/SR-10/12 dated 26.05.03

With due regard I, I. Hansdak, last posted as Dy CME/WS at Maligaon, N. F. Railway, would like to bring forth the following matter to your notice for perusal, judicious considerations and review: -

1. That Sir, My application dated 21.04.03 and 22.04.03 for withdrawal of voluntary retirement was not on extraordinary grounds and was well within the purview of the extant rules, vide items 3(i) and (ii) of Board's L/No. E (P&A) I-2000/RT-9 dated 05.11.2001 (RBE No. 217/2001) and circulated under L/No. E/228/O Pt-XII (C) Dated 20.11.2001 by this railway.
2. That Sir, the grounds given for rejecting my application for withdrawal for voluntary retirement were without any valid reasons and have no statutory bearings. It was done on the basis of speculative deductions and conjectures.
3. That Sir, my application for withdrawal of voluntary retirement was not accepted by the competent authority along with Shri Indra Ghosh (then posted at Railway Board) who also applied for voluntary retirement and subsequently applied for withdrawing the application for voluntary retirement.
4. That Sir, it is learnt that the application for withdrawal of voluntary retirement of Shri Indra Ghosh was reviewed in isolation at a later date. It was considered and accepted at a later date by the competent authority, but my case was not considered. Thus once again administration has shown biasness in a most overt manner and natural justice was denied to me.
5. That Sir, the rejection of my appeal for withdrawal of voluntary retirement was on absurd and flimsy arguments, and subsequent acceptance of appeal of Shri Indra

*Attest
for
Advocate*

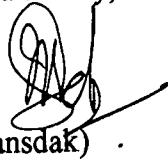
Ghosh for withdrawal of voluntary retirement 'selectively' is completely arbitrary and irrational.

6. That Sir, I would urge your good office to reconsider my appeal for withdrawal of voluntary retirement afresh.

I am hopeful that my appeal would be given due attention and decision would be conveyed in a reasonable time period.

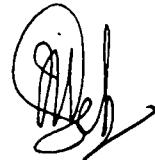
Thanking you,

Yours faithfully,



(I. Hansdak)

Copy to: - Chairman, National Commission for SCs & STs, in continuation of my appeal dated 07.07.2003 & 21.08.2003 for information and taking necessary actions.



Address:-

B. No-112, Nambari
Maligaon,
Distt:-Kamrup
Guwahati-781011
ASSAM

- 30 -
No

ANNEXURE-'N'

To:

Shri Laloo Prasad Yadav
Minister Railways,
Rail Bhawan,
New Delhi

Honourable Sir,

Dated: 24.03.2005

Sub:-Review of my prayer to withdraw my option for voluntary retirement.

Ref:- My appeal addressed to Secretary Railway Board dated 09.10.03 and many other representations to Board and other offices.

With due regard, I, I Hansdak, last posted as Dy CME/WS at Malignaon, N.F.Railway, would like to draw your personal attention to my case for judicious and early review as all other appeals have gone unheard and unanswered:-

1. That Sir, I applied for voluntary retirement which was subsequently withdrawn vide my application dated 21.04.2003 and 22.04.2003 duly recommended by GM/N.F.Railway. Copy of the same is enclosed for ready reference.
2. That Sir, my application for withdrawal of voluntary retirement was rejected indiscriminately and without any valid reasons. There are cases in the Railways where applications for withdrawal are being accepted in a routine manner. But my case has been dealt with biased considerations.
3. That Sir, my application for withdrawal of voluntary retirement was not accepted along with that of Shri Indra Ghosh (then posted at Railway Board) who also applied for voluntary retirement and subsequently applied for withdrawal of the application for voluntary retirement.
4. That Sir, it is learnt that the application for withdrawal of voluntary retirement of Shri Indra Ghosh was reviewed and accepted even after refusal in isolation at a later date by the then Railway Minister Shri Nitish Kumar but my case was not considered at all. Thus once again the competent authority has shown biasness in disposing of my case. Natural justice was once again denied to me.
5. That Sir, I belong to Scheduled Tribe Community and hence my case may be reviewed with priority and compassion.

*Attest
Jaiji Advocate*

Sir, it is my humble appeal to your good office to review my case afresh and with open mind so that justice is not denied to me and also keeping in view the case of Shri Indra Ghosh. As all my appeals have gone unheeded I am bound to draw your personal attention to reconsider my case. Once again I would like to highlight the following points for perusal:

- Why was my appeal for withdrawal of voluntary retirement duly recommended by General Manager, N.F. Railway not accepted?
- Why was my case not reconsidered along with the case of Shri Indra Ghosh as both were dealt together and were of similar nature and his case was given a different treatment?

I hope and pray that justice be given to me without further delay.

With warm regards,

Yours faithfully,


(L. HANSDAK)
Ex Dy CME/WS/Maligaon,
N. F. Railway

Address:
L. Hansdak
C/o Shri B. K. Deka
CME's Office
N.F. Railway, Maligaon

Brother Kumar our my case was not considered at all. Thus once again the competent authority has shown biasness in disposing of my case. Natural justice was once again denied to me.

5. That Sir, I belong to Scheduled Tribe Community and hence my case may be reviewed with priority and compassion.

ANNEXURE-'O'

-32-

To:

Shri Laloo Prasad Yadav,
Minister Railways
Rail Bhawan,
New Delhi

Dated:04.05.05

5

Honourable Sir,

Subject: - Review and reconsideration of my prayer for withdrawal of notice of Voluntary Retirement from railway service.

Ref.: - My appeal to Minister Railways dated 24.03.05, 09.10.03 and many other representations to the Railway Board.

With due regard, I, I Hansdak, last posted as Dy CME/WS at Maligaon, N.F. Railways, would like to draw your personal attention to my case pertaining to rejection of my prayer for withdrawal of notice of voluntary retirement from railway service. The following facts are brought forth for your kind perusal and judicious decision: -

1. That Sir, I applied for voluntary retirement as per provisions in railway rule, vide para-11 of Master Circular on voluntary retirement. The extract of the relevant para is reproduced and placed at SN- 4 and the application is placed at SN—5.
2. That Sir, as per guidelines given in Railway rules I applied for withdrawal of notice for voluntary retirement vide my applications dated 21.04.05 and 22.04.05 (placed at SN-- 6 & 8). The GM/N.F. Railway recommended the case and forwarded to Board for taking necessary action at appropriate level. GM/P/ N.F.Railway's letter to Secretary Railway Board is placed at SN—9 . The relevant guidelines on withdrawal of notice for Voluntary Retirement is placed at SN—10 .
3. That Sir, my application for withdrawal of notice for voluntary retirement was refused by the competent authority which was conveyed under Board's letter placed at SN— 12 .
4. That Sir, as per rules available (placed at SN -- 12) and guidelines circulated by Railways from time to time (relevant extracts placed at SN -- 4) prayer for withdrawal of the notice for voluntary retirement should be considered in a ' reasonable ' and ' rational ' manner; and refusal of such a request can be done only with valid reasons.
5. That Sir, the refusal of my prayer for withdrawal of notice for voluntary retirement has been done in a very casual manner and the spirit of " VOLUNTARY RETIREMENT" has grossly been violated. It appears the decision to refuse my prayer for withdrawal of notice for voluntary/has been taken in an irrational manner which

Retirement

*After
fat
Adarsh*

shows that the reciprocation of administration is willfully malicious, predetermined and biased.

Besides all these, I have not received any reply to my subsequent representations.

- That Sir, it is learnt that the case of voluntary retirement of **Shri Indra Ghosh** (then posted at Railway Board) was also dealt concurrently by the Railway Board. It is also learnt that the prayer of Shri Ghosh was reviewed and reconsidered after initial refusal by the competent authority. But my case was not reviewed and no further intimation was given to me. Thus once again the railway administration has acted in a preconceived and biased manner.

It is also brought to your kind notice that such cases of withdrawal of notice for voluntary retirements are many in the railways. I am quoting the recent case of **Shri B. K. Biswas** who was posted in N.F. Railway as Dy CME who had opted for voluntary retirement in recent months but withdrew his application, which was accepted by the Railway Board. His case may also be perused for comparison.

- That Sir, I belong to Scheduled Tribe Community and hence my case may be dealt with priority and compassion.

It is my humble prayer to you to review my case afresh and restore justice to me and my family without further delay as 'justice delayed is justice denied.'

With warm regards,

Yours faithfully,



(I. HANSDAK)
Ex Dy CME/Maligaon

Address: -

I. Hansdak
C/o Shri B. K. Deka
CME's Office,
N. F. Railway,
Maligaon, Guwahati-11

ANNEXURE-'P'

-34-
BY FAX

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

No. E(O)-I/2003/SR-10/12

Dated 31.08.2005

The General Manager
Northeast Frontier Railway
Maligaon
Guwahati

(Kind Attn.: Sh.P.K.Singh, Dy.CPO/G)

Sub: Application for withdrawal of notice for voluntary retirement from service : the case of Sh. I. Hansdak, Dy.CME/WS/MLG, N.F. Railway

Ref: Railway's case file No.340E/121/278(0)

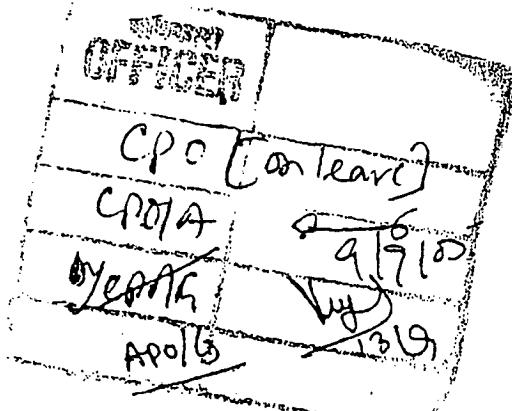
The petitions dated 24.03.2005 and 04.05.2005 submitted by Sh. I. Hansdak, ex. Dy.CME/WS/MLG, N.F. Railway requesting for reconsideration of the earlier decision of the President contained in this Ministry's letter of even number dated 26.05.2003 rejecting his earlier request dated 22.04.2003 seeking withdrawal of the notice dated 20.01.2003 for voluntary retirement from service w.e.f. 01.05.2003, have been examined. The President, on reconsideration, has decided, as a very special case on the grounds of mercy, to accept the request dated 22.04.2003 of the said Sh. Hansdak and to reinstate him in service with effect from the date on which he resumes duty.

This issues in suppression of the aforesaid earlier decision dated 26.05.2003.

It is presumed that retirement dues of Shri Hansdak would have already been released to him. If so, the same would have to be realised back from him by the Railway Administration in accordance with the relevant provisions contained in the Railway Services (Pension) Rules, 1993. This may kindly be ensured by the Railway.

The implementation of the above order may kindly be advised to this office at the earliest.

lunsharma
(K.K. SHARMA)
JOINT SECRETARY (E & P)
RAILWAY BOARD



*Alfred
Sub. Advocate*

To

The Secretary
Railway Board
New Delhi

Sub : **Issue of orders for my joining duty after acceptance of my representation withdrawing the notice of voluntary retirement by Competent Authority**

Sir,

At the outset, I would like to thank the Board for reconsidering my prayer for withdrawal of notice of voluntary retirement from the Railway Service. I have been informed verbally that the Minister for Railways has accepted my appeal of withdrawal of notice of Voluntary Retirement in the month of August, 2005 but no order has been issued even after a lapse of almost 2 months for my joining duty.

Almost two and a half years have passed since I was looking forward for the approval and reconsideration of my prayer for reinstatement in service as I had withdrawn my application for Voluntary Retirement due to changed circumstances as per the extant rules which was duly recommended by the GM/N.F. Railway. But it is quite unfortunate that my appeal was regretted at that time. However, the same been reconsidered and reviewed after a period of two and a half years.

Sir, I would like to inform your good office that during this period, I have been given Final Settlement and Pension which I had to accept after initial refusal to sustain myself and my family and due to other personal compulsions. Higher education of my children was also in stake and I had no choice but to accept the Final Settlement/Pension to further their education and to discharge my basic responsibilities towards my family, parents, relations and society. I am also to support my orphaned cousin brother for his higher education. Time is a major factor for the education of children and it would not wait.

Two and a half years is a long wait and could make/mar the destiny of a family. This period has been a painful experience for me, my family and parents. It has definitely affected quality of life of my family and self. Due to frequent visits (which needs time and money) to New Delhi and other places necessitated for chasing of my case, I have not been able to concentrate on anything during this period. And things are not all well at this present juncture of time. Further education of my children is badly getting affected and admission of my orphaned cousin to an Engineering College is hampered due to my bad financial position. Practically my family is at the verge of disintegration and any further delay in my joining the job will have derogatory impact on the future of my children.

...2

*Affid
for
Advocate*

-2-

Therefore, I fervently appeal to you to issue orders so that I can join duty as early as possible as two months have already passed after the acceptance of my prayer for reinstatement by the Competent Authority. In the meantime, a judgement on a similar matter has been given by the Supreme Court which was published in a few leading national papers, newspaper cuttings are enclosed herewith for ready reference. Brief details of the case is as under :-

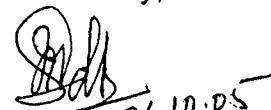
Appeal Civil 1404 of 2003
Srikantha S.M. vs M/s.B.E.M.L.
Subject Category : Service matters – Conditions of Services

In view of the situation explained above and the spirit of above referred judgement, I once again pray for issue of necessary orders for my joining duty at the right earnest. Other formalities may be completed in due course of time. I agree to return the money received by me as Final Settlement/Pension as per the existing rules and the latest Supreme Court guidelines.

In short, your timely action will go a long way in saving my family from the serious trauma being faced by them and safeguarding the future of my children.

Thanking you,

Yours faithfully,



26.10.05
(I. Hansdak)

Ex.Dy CME/WS/N.F. Railway
Res : C/o Shri B.K. Paswan
Dy. CME/Diesel/NF Railway
NF Railway HQ Office
Maligaon, Guwahati
Assam

Copy to :-

Hon'ble Minister for Railways - for kind information.

Secretary General, FROA- for necessary action.

General Manager, N.F. Railway, Maligaon, Guwahati - for kind information and necessary action.

ANNEXURE - 'R'

- 37 -

sunil + nriah
Please advise total
the officer will interest to
amount with deposited
be deposited 10 days GOVERNMENT OF INDIA
target 10 days MINISTRY OF RAILWAYS
(RAILWAY BOARD)
16/11/06
No. E(O)-I/2003/SR-10/12

BY FA

Dated 12.1.2006

The General Manager
Northeast Frontier Railway
Maligaon
Guwahati

(Kind Attn.: Sh.P.K.Singh, Dy.CPO/G)

Sub: Application for withdrawal of notice for voluntary retirement from service : the case of Sh. I. Hansdak, Dy.CME/WS/MLG, N.F. Railway

Ref: Railway's letter No.340E/121/278(0) dated 02.09.2005

Reference is invited to the Railway Board's letter of even number dated 12.09.2005 whereby Railway was advised to keep in abeyance the decision communicated vide Railway Board's letter of even number dated 31.08.2005 on a decision on the queries raised by the Railway vide their letter dated 02.09.2005 as referred to above is communicated to them. The matter has since been examined in consultation with Department of Personnel and Training and it has been decided that in partial modification of the decision communicated to Railway vide Railway Board's aforesaid letter dated 31.08.2005, the following decision may be communicated to Sh. I. Hansdak, ex. Dy. CME, N.F. Railway :

"The petitions dated 24.03.2005 and 04.05.2005 submitted by Sh. I. Hansdak, ex. Dy. CME/WS/MLG, N.F. Railway requesting for reconsideration of the earlier decision of the President contained in this Ministry's letter of even number dated 26.05.2003 rejecting his earlier request dated 22.04.2003 seeking withdrawal of the notice dated 20.01.2003 for voluntary retirement from service w.e.f. 01.05.2003, have been examined. The President, on reconsideration, has decided, as a very special case on the grounds of hardship keeping in view the genuine hardship being faced by the said Sh. Hansdak to accept the aforesaid request dated 22.04.2003 of the said Sh. Hansdak to reinstate him in service subject to fulfilment of the following two conditions:

(a) that the pensionary benefits drawn by the said Sh. Hansdak shall be refunded by him in lumpsum along with the interest at the rate as prescribed in Railway Services (Pension) Rules, 1993, viz. the rate applicable on accumulations from time to time before the said Sh. Hansdak is reinstated.

E-1

E-2-PTO

Affest
Sat.
Advocate

(b) that the intervening period, i.e. the period between the date on which the said Sh. Hansdak stood voluntarily retired and the date on which he finally reinstated after fulfilling the condition as mentioned in sub-para above, shall be treated as dies non.

Sh. I. Hansdak may accordingly resume his duties w.e.f. the date which he fulfills the condition as mentioned in para (a) above and a resumption of duties by him in the aforesaid manner, the intervening period shall be treated as dies non in terms of para (b) above.

3. On receipt of the aforesaid communication, if and when Sh. Hansdak accepts the said conditions and refunds the pensionary benefits drawn by him lumpsum along with interest, Railway may reinstate him in service w.e.f. date of such refund of pensionary benefits by him, and treat the intervening period as dies non in terms of the aforesaid decision.
4. This issues in consultation with the Finance Directorate of the Ministry of Railways.

Action taken may kindly be advised to this office at the earliest.


(SUNIL KUMAR)
UNDER SECRETARY (D&A)-I
RAILWAY BOARD

ANNEXURE-'S'

-39-

5X

N. F. Railway

Office of the
General Manager (P),
Maligaon, Guwahati -11.

No. 340E/1/278/PN (O)

Dated: 17.02.2006

To
Shri I. Hansdak,
Ex. Dy.CME/WS/MLG,
at Padumburi,
P. O. Gotanagar,
Guwahati - 33.

Sub: Deposit of lumpsum pensionary benefits.

Ref: Railway Board's letter No. E(O)-I/2003/SR-10/12
dated 12.01.2006.

In reference to Board's letter quoted above, you are hereby requested to deposit in lumpsum an amount of Rs.15,81,648/- (Rupees Fifteen lakhs eighty one thousand six hundred forty eight) only to Dy.CAO/Cash & Pay/MLG, which has been vetted by Finance. Your case for reinstatement will be considered only after fulfillment of above conditions, as laid down by Railway Board.

A copy of Board's letter dated 12.01.2006 is enclosed for your ready reference.

DA: As above.

Vijay
(P. K. Singh)
Dy.CPO(Gaz)
for General Manager (P).

*Affid
Lab.
Advocate*

ANNEXURE-'T'

-40-

50

Northeast Frontier Railway

Office of the
General Manager (P),
Maligaon, Guwahati -11.

No. 340E/1/278/PN (O)

Dated: 20.02.2006

To
The Secretary,
Railway Board,
New Delhi.

Sub: Appeal for relaxation of the condition for reinstatement in
Railway Service after acceptance of withdrawal notice
of voluntary retirement.

An appeal dated 20.02.2006 submitted by Shri I. Hansdak, Ex.
Dy.CME/Maligaon in connection with the above mentioned subject is forwarded
herewith for Board's kind information and necessary action please.

DA: As above.

(P. K. Singh)
Dy.CPO(Gaz)
for General Manager (P).

Copy for information to: -

✓ Shri I. Hansdak, Ex. Dy.CME/Maligaon
At Padumburi, P.O. Gotanagar,
Guwahati - 33.

*Vijay
20/2/2006*
for General Manager (P).

*After 1st
Law.
Adviser*

To:

**The Secretary,
Railway Board
Rail Bhawan,
New Delhi**

Dated:20.02.06

Sir,

(Through proper channel)

Subject:-Appeal for relaxation of the condition for my reinstatement in Railway Service after acceptance of my withdrawal notice of voluntary retirement.

Ref.:- (I) Bd's letter No. E(O)L/2003/SR10/12 dated 31.08.200

(II) Bd's letter of even No. dated 12.01.200

(III) GM/N.F. RI's L.No 340E/1/278/PN(O) dated 17.02.2006.

At the outset, I would like to express my gratitude to the Railway Board and the N.F. Railway for reconsidering my prayer for withdrawal of notice of voluntary retirement from railway service. The Board has issued necessary guidelines for my reinstatement in the railways vides Bd's letters referred above. On the basis of the guidelines issued by the Bd., the G.M./N.F. Railway has advised me to deposit Rs.15,81,648.00 (Rupees fifteen lakhs eighty one thousand six hundred forty eight) only with the railways in lumpsum before I join duty as incorporated in para (a) of the Bd's letter dated 12.01.2006, vide letter referred at (III) above.

Almost 3 (three) years have passed since I was looking forward for the approval and reconsideration of my prayer for reinstatement in service as I had withdrawn my application for voluntary retirement due to changed circumstances as per the extant rules, which was duly recommended by the G.M./ N.F. Railway. However, my appeal has been reconsidered and reviewed after a lapse of 3 years.

That Sir, I would like to inform your good office that during this period I have been given Final Settlement and pension, which I accepted after initial refusal to sustain my family and myself; and due to other personal compulsions. Higher education of my children was at stake and I had no choice but to accept the F.S./Pension to further their education. I needed resources, too, for persistent follow-up my case at Board's level and in the Home Ministry. It was also necessitated to discharge my basic responsibilities towards my family, parents, relatives and society. I am also to support my orphaned cousin brother for his higher education. Time is a major factor for the education of children and it would not wait.

Sir, in the circumstances explained earlier it would be difficult for me to deposit Rs.15,81,648.00 (Rupees fifteen lakhs eighty one thousand six hundred forty eight) only lumpsum before I join duty. The Bd's letter referred at (II) above has also incorporated in second para the circumstances of hardship being faced by me which is one of the reasons for review of my appeal by the President.

Therefore, it is my humble prayer to relax the condition for my reinstatement/ reemployment after reconsideration. I assure you that I would repay the Final Settlement/Pension received by me in monthly installments and part lumpsum deposits from time to time. If I am reinstated and posted my pay particulars would be as given below:-

*Attest
S. N. Mehta*

Pay Particulars in case of re-employment

Pay : Rs. 15,900.00	P.F. : Rs. 1988.00
DP : Rs. 7950.00	GIS : Rs. 120.00
DA : Rs. 5009.00	AP/TAX : Rs. 185.00
SDA: Rs.2981.00	Rs. 2293.00
SCA : 200.00	<u>Average I/Tax : 5000.00</u>
Magazine :200.00	Total Deductions : 7293.00
Total Rs 32,240.00	

Service Particulars

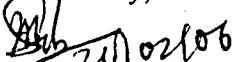
Date of Birth: **10.06.1960**
Date of Appointment: **08.03.1980**
Date of Retirement: **30.06.2020**
Service left: 14 Years 04 Months (from March -2006)

On the basis of the particulars given above I propose to repay the F.S./Pension in monthly installments of Rs. 10,000.00 (Ten thousands only) minimum which could be increased later in consultation with GM/ Personnel. It would be my effort to repay the accumulated F.S/Pension paid to me as early as possible by making part lumpsum payments as well.

In view of the above I once again urge to your good office to accept my prayer for review and relax the condition for my reinstatement as enumerated above and permit me to repay F.S./Pension in monthly installments after I am reemployed. Necessary directives may kindly be issued early to the G.M. /N.F. Railway for effecting my early reinstatement in Railway Service.

Thanking you,

Yours faithfully,


(I. HANSDAK)
Ex Dy CME/Maligaon

Address :-

I. Hansdak
At: Pudumburi
P.O.: Gotanagar
Dist : Kamrup, Guwahati- 781033

ANNEXURE-V

-43-

61

To:

*The Secretary,
Railway Board
Rail Bhawan,
New Delhi*

Dated: 09.03.06

Sir,

(For kind attn of Shri K.K. Sharma, J.S (E)

**Subject:-Appeal for relaxation of the condition for my reinstatement
in Railway Service after acceptance of my withdrawal
notice of voluntary retirement.**

Ref.:-(I) Bd's letter No. E(O)I/2003/SR10/12 dated 31.08.2000

(II) Bd's letter of even No. dated 12.01.2000

(III) GM/N.F. RI's L.No 340E/1/278/PN(O) dated 17.02.2006.

In continuation to my appeal dated 28.02.2006 on the matter of mode of repayment of the F.S./pension amount to the railways, I may be allowed to repay the dues in two installments (instead of monthly installments as proposed earlier). I would pay 50% of the amount before joining and rest 50% plus the accrued interest on that amount within two years of my reinstatement.

I shall be extremely grateful if the above prayer is kindly accepted.

Thanking you,

Yours faithfully,



(I. HANSDAK)
Ex Dy CME/Maligaon

N.F. Railway

Address: -
I. Hansdak
At: Pudumburi
P.O.: Gotanagar
Dist : Kamrup,Guwahati- 781033

*After 5th
fata Adrakal*

ANNEXURE 'W'

-44-
✓

To:

09.03.2006

Shri Lalu Prasad,
Hon'ble Minister Railways,
Railway Board,
New Delhi

Honorable Sir,

Sub: Prayer for relaxation of the conditions for reinstatement in Railway service after acceptance of withdrawal notice of voluntary retirement.

Ref: (i) Board's letter No.E(O)I/2003/SR/10/12 dated 31.08.2005 & 12.01.2006

(ii) GM(P)/MLG's letter No.340E/I/278/PN(Q) dated 17.02.2006.

Honorable Sir,

At the outset I express my gratitude to you for accepting my prayer of withdrawing notice of voluntary retirement from service. In this context I would like to draw your kind attention to the following facts:

1. That Sir, my appeal dated 21/22.04.2003 for withdrawing the notice of voluntary retirement was reviewed and reconsidered by your good office vide Bd's letter dated 31.08.2005 and 12.01.2006 referred to above.
2. That Sir, no formal intimation was given on the Bd's decision of acceptance of my appeal and the Bd's letter dated 31.08.2005 was not implemented.
3. That Sir, Railway Board issued another order dated 12.01.2006 asking me to deposit lump sum Rs.15, 81,648/- as a precondition for my reinstatement. This sum is the amount of FS/Pension including interests.
4. That Sir, three (3) years have passed full of hardships and mental trauma for me and my family. At this moment I agree to pay back the FS/pension benefits in two installments i.e. 50% before my

*Attest
for
Advocate*

reinstatement and balance 50% and interest accrued within two years thereafter.

5. That Sir, my prayer for reinstatement has been considered on the grounds of genuine hardship being faced by me.

You are, therefore, requested to permit me to repay the FS/pension benefits in two installments as mentioned in Para 4 above.

For this act of kindness I would be ever grateful to you.

With warm regards,

Yours faithfully,


(I. Hansdak)
Ex.Dy.CME/WS/HQ
NFRly./MLG

Add:-

AT- PUDUMBURI
P.O. - GOTANAGAR
GUWAHATI - 781033

ASSAM

ANNEXURE-X'

-46-

cm

N.F. RAILWAY

Office of the
General Manager(P)
Maligaon, Guwahati-11

No.340E/1/278/PN(O)

Dated: 09.05.2006.

To,
Shri I. Hansdak,
Ex.Dy.CME/Maligaon
At Padumbari,
P.O. Gotanagar,
Guwahati-33.

Sub.:- Appeal for relaxation of the condition for reinstatement in
Railway service after acceptance of withdrawal notice of
Voluntary retirement.

Ref.: - Railway Board's letter No.E(O)-1/2003/SR-10/12 dated
08.05.2006.

Your appeal dated 09.03.2006 was forwarded to Railway Board for consider
of your case. But, Railway Board have not accepted your request regarding relaxation
of the conditions, and also advised that your case for reinstatement in service to be
considered only after fulfilling all the conditions as laid down in the Railway Board's
letter No.E(O)-1/2003/SR-10/12 dated 12.01.2006.

This is for your information please.


(P.K. SINGH)
DY.CPO/GAZ.
For GENERAL MANAGER(P)

*W.H. Sarker
Advocate*

ANNEXURE-Y

-47-

(Copy of Rlyt Bd.'s letter No. E (P&A) I-8500/RTB9
dt'd 5/11/2001)

CPD
SLW
Sub: Voluntary retirement of Railway employees – Clarification regarding.

Attention is invited to the instructions contained in Board's letter No. E(P&A)I-90/RT-18 dated 6.11.90 and the clarification issued under Board's letter of even number dated 27.03.01.

2. A reference has been received from one of the Federations, citing verdicts of the Supreme Court in civil Appeals No. - 6573 – 6574 of 1997 (arising out of StPO Nos. 8500-8501 of 1997) dated 22.09.97 in the case of Shri J.N. Srivastava vs/U.O.I and in the earlier civil Appeal No. 2057 of 1987 dated 01.09.87 in the case of Shri Baliram Gupta Vs U.O.I and seeking review of the above instructions of the Board, in the light of those judgments.

3. The matter has been examined at length by this Ministry in consultation with the nodal Ministry and Legal Advisor, Railway Board and it has been decided that the following procedure should be adhered to, while considering requests for withdrawal of notices for voluntary retirement :-

- i. An employee who wishes to withdraw his/her notice for voluntary retirement, before expiry of the prescribed three month period, should indicate clearly in his/her request the circumstances/reasons for withdrawing the same.
- ii. Such an application may be made by the concerned employee, even after the competent authority has accepted his/her request for voluntary retirement, provided it is submitted before expiry of the three month period.
- iii. The competent authority should consider the request for withdrawal of the notice for voluntary retirement in a reasonable and rational manner and refuse such a request only if there are valid reasons for doing so, which should be recorded by way of a speaking order.

4. *Blank acknowledge receipt*

<i>CPD</i>	<i>Am 3/11/2001</i>
<i>RD/A</i>	<i>W.B. 3/11/01</i>

Nadira Razak
(Nadira Razak)
Joint Director, Estt.(P&A)
Railway Board.

*Attested
for
Advocate*

ANNEXURE-'Z'

(1998) 9 Supreme Court Cases 559

(BEFORE S.B. MAJMUDAR AND S. SAGHIR AHMAD, JJ.)

J.N. SRIVASTAVA

Appellant:

Versus

d UNION OF INDIA AND ANOTHER Respondents.

Civil Appeals Nos. 6573-6574 of 1997[†], decided on September 22, 1997

A. Service Law — Retirement — Voluntary retirement — Notice — Withdrawal of, before intended date of retirement — Permissibility — Three months' notice for voluntary retirement given on 3-10-1989 which was to come into effect from 31-1-1990 — Notice accepted by the Government on 2-11-1989 and thereafter the appellant withdrawing notice vide his letter dated 11-12-1989 — Withdrawal, held, permissible because it was made before 31-1-1990 — Further held, even if the voluntary retirement notice is moved by an employee and gets accepted by the authority within the time fixed, before the date of retirement is reached, the employee has locus poenitentiae to withdraw the proposal for voluntary retirement — The appellant therefore deemed to have continued in service till his superannuation age (Para 3)

Balram Gupta v. Union of India, 1987 Supp SCC 228 : 1988 SCC (L&S) 126 : (1987) 5 ATC 246, relied on

Suggested Case Finder Search Text (*inter alia*) :

voluntary retirement withdraw*

B. Service Law — Back Wages — "No work, no pay" — When not applicable — Appellant deemed to have continued in service till his superannuation age because his request for withdrawal of notice for voluntary retirement was wrongly rejected — Appellant, held, entitled to arrears of salary and other emoluments including increments because he was ready and willing to work — Plea of "no work, no pay" rejected — Pensionary benefits also directed to be revised accordingly subject however to adjustment of amounts already paid (Para 3)

h

[†] Arising out of SLPs (C) Nos. 8500-8501 of 1997

*Affected
fact.
Advocate*

560

SUPREME COURT CASES

Suggested Case Finder Search Text (*inter alia*):

(1998) 9 SCC

"no work no pay"

Appeal allowed

K-O-M/19533/SLA a

Chronological list of cases cited

1. 1987 Supp SCC 228 : 1988 SCC (L&S) 126 : (1987) 5 ATC 246, *Balram Gupta v. Union of India* on page(s)

ORDER

560e-f

1. Leave granted.
2. With the consent of learned counsel for the parties the appeals were heard finally.

3. The short question is whether the appellant was entitled to withdraw his voluntary retirement notice of three months submitted by him on 3-10-1989 which was to come into effect from 31-1-1990. It is true that this proposal was accepted by the authorities on 2-11-1989. But thereafter before 31-1-1990 was reached, the appellant wrote a letter to withdraw his voluntary retirement proposal. This letter is dated 11-12-1989. The said request permitting him to withdraw the voluntary retirement proposal was not accepted by the respondents by communication dated 26-12-1989. The appellant, therefore, went to the Tribunal but the Tribunal gave him no relief and took the view that the voluntary retirement had come into force on 31-1-1990 and the appellant had given up the charge of the post as per his memo relinquishing the charge and consequently, he was estopped from withdrawing his voluntary retirement notice. In our view the said reasoning of the Tribunal cannot be sustained on the facts of the case. It is now well settled that even if the voluntary retirement notice is moved by an employee and gets accepted by the authority within the time fixed, before the date of retirement is reached, the employee has *locus poenitentiae* to withdraw the proposal for voluntary retirement. The said view has been taken by a Bench of this Court in the case of *Balram Gupta v. Union of India*¹. In view of the aforesaid decision of this Court it cannot be said that the appellant had no locus standi to withdraw his proposal for voluntary retirement before 31-1-1990. It is to be noted that once the request for cancellation of voluntary retirement was rejected by the authority concerned on 26-12-1989 and when the retirement came into effect on 31-1-1990 the appellant had no choice but to give up the charge of the post to avoid unnecessary complications. He, however, approached the Tribunal with the main grievance centering round the rejection of his request for withdrawal of the voluntary retirement proposal. The Tribunal, therefore, following the decision of this Court ought to have granted him the relief. We accordingly allow these appeals and set aside the orders of the Tribunal as well as the order of the authorities dated 26-12-1989 and directed the respondents to treat the appellant to have validly withdrawn his proposal for voluntary retirement with effect from 31-1-1990. The net result of this order is that the appellant will have to be

¹ 1987 Supp SCC 228 : 1988 SCC (L&S) 126 : (1987) 5 ATC 246

a treated to be in service till the date of his superannuation which is said to be somewhere in 1994 when he completed 58 years of age. The respondent-authorities will have to make good to the appellant all monetary benefits by treating him to have continuously worked till the date of his actual superannuation in 1994. This entitles him to get all arrears of salary and other emoluments including increments and to get his pensionary benefits refixed accordingly. However, this will have to be subject to adjustment of any pension amount and other retirement benefits already paid to the appellant in the meantime up to the date of his actual superannuation. 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

b 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.

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ANNEXURE - 'Z' ... Continued

JT 2002 (3) SC 37

**Shambhu Murari Sinha v. Project &
Development India Ltd. & Anr.**

Civil Appeal No. 2639 of 2000

**(From the Judgment and Order dated
21.6.99 of the Patna High Court in L.P.A.
No. 57 of 1999 (R))**

**S.N. PHUKAN & P. VENKATARAMA
REDDI, JJ.**

Dt. 13.3.2002

APPEARANCES

*M. H. Patel
for
Advocate*

Mr. S.B. Upadhyay, Mr. Pawan Upadhyay, Mr. Sujit Kr. Singh, Mr. Santosh Mishra, Advocates for the Appellant.

Mr. Deba Prasad Mukherjee and Ms. Vandini Gore, Advocates for the Respondents.

SERVICE AND LABOUR LAW

Voluntary retirement - Effect of acceptance - Right of employee to withdraw from voluntary retirement - Appellant applying for voluntary retirement from the services of the respondent company under the scheme framed by it - Company accepting the application and intimating that the release memo along with details would follow - Before the receipt of any such memo and details, appellant sending letter, withdrawing his application - Not receiving any response from the company, appellant again sending another letter withdrawing his option to retire - On the date of receipt of this letter company issuing a memorandum releasing the appellant from the services - Appellant filing writ challenging the release order but single judge dismissing the petition and division bench upholding such dismissal. *In the letter of acceptance issued by the company was conditional and before the receipt of the release memorandum, the appellant withdrew his option. Appellant therefore, had locus poenitentiae to withdraw his proposal for voluntary retirement before the relationship of employer and*

employee came to an end. Respondent company was therefore wrong in refusing to accept the appellant's withdrawal of his option for voluntary retirement.

HELD

The letter of acceptance was a conditional one inasmuch as, though option of the appellant for the voluntary retirement under the scheme was accepted but it was stated that the 'release memo along with detailed particulars would follow'. Before the appellant was actually released from the service, he withdrew his option for voluntary retirement by sending two letters dated August 7, 1997 and September 24, 1997, but there was no response from the respondent. By office memorandum dated 25th September, 1997, the appellant was released from the service and that too from the next day. It is not disputed that the appellant was paid his salaries etc. till his date of actual release i.e. 26 September 1997, and, therefore, the juridical relationship of employee and employer between the appellant and the respondent did not come to an end on the date of acceptance of the voluntary retirement and said relationship continued till 26th of September, 1997. The appellant admittedly sent two letters withdrawing his voluntary retirement before his actual date of release from service. Therefore, in view of the settled position of the law and the terms of the letter of acceptance, the appellant had locus poenitentiae to withdraw his proposal for voluntary retirement before the relationship of employer and em-

ployee

We, the could not withdrawal it was s of emp end. Com ment is hereby tied to r all his s the per (Para 1

CASES

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PHUKA

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ployee came to an end. (Para 18)

We, therefore, hold that the respondent could not have refused to accept the withdrawal of resignation of the appellant as it was sent before. the jural relationship of employee and employer, came to an end. Consequently, the impugned judgment is liable to be set aside, which we hereby do. The appellant shall be entitled to rejoin his duty and he shall be paid all his salaries and other benefits during the period he was out from the service. (Para 19)

CASES REFERRED:

1. Shambhu Murari Sinha v. Project & Development India & Anr. [JT 2000 (6) SC 358] (Para 3)
2. J.N. Srivastava v. Union of India [(1998) 9 SCC 559] (Paras 3, 12)
3. Nand Keshwar Prasad v. Indian Farmers Fertilizers Cooperative Ltd. & Ors. [JT 1998 (6) SC 71] (Para 13)
4. Power Finance Corpn. Ltd. v. Pramod Kumar Bhatia [JT 1997 (4) SC 300] (Paras 3, 16)
5. Balram Gupta v. Union of India [JT 1987 (3) SC 480] (Paras 3, 10)
6. Union of India & Ors. v. Gopal Chandra Misra & Others [(1978) 2 SCC 301] (Para 9)
7. Raj Kumar v. Union of India [(1968) 3 SCR 857] (Para 14)

PHUKAN, J.

1. In this appeal by special leave, the appellant has assailed the judgment dated 21.6.1999 passed by the Patna High Court in LPA No. 57 of 1999 (R).

By the impugned judgment, the division bench affirmed the judgment of the learned single judge dated 3.2.1999 passed in CWJC No. 2970 of 1997 (R)

2. The appellant joined the respondent-company as a draftsman trainee in the year 1964 and was promoted to the post of general foreman (electrical) On October 12, 1995, the respondent-company issued an improved voluntary retirement scheme (for short 'VRS') giving more benefits to the employees, which was effective from 12th October, 1995 to 18th October, 1995. The appellant applied for voluntary retirement on 18th October 1995 under the scheme, which was accepted by the management on 30th July, 1997 with the condition that 'the release memo along with details particulars will follow'. On August 7, 1997, the appellant sent a letter withdrawing his option from the VRS by registered post but no response was received by him from the respondents. Again on September 27, 1997 another letter was sent by the appellant withdrawing his option from the scheme. This letter was received on 25th September, 1997 but there was no reply from the respondent. The respondent-company issued a memorandum on 25th September, 1997 releasing the appellant from the service of the company w.e.f 26th September, 1997 (afternoon). The appellant filed a petition under Article 226 of the Constitution before the High Court challenging the said release order, which was dismissed by the learned single judge and it was upheld by the impugned judgment. That is how the matter is before us.

3. This appeal came up for final hearing before a division bench of this Court and by order dated April 13, 2000, the appeal was allowed on the reasoning that the appellant was not relieved from service and was allowed to continue in service till 26.9.1997, which, for all practical purpose would be the "effective date" as it was on this date that he was relieved from service. As the appellant had already withdrawn the offer from VRS on 7.8.1997, the resignation in spite of its acceptance could be withdrawn before the said effective date and, therefore, such withdrawal was valid in law [See **Shambhu Murari Sinha v. Project & Development India & Anr.**¹ [(2000) 5 SCC 621]]. The division bench relied on the following decisions of this Court namely, **Balram Gupta v. Union of India**² [(1987) Supp. SCC 228], **J.N. Srivastava v. Union of India** [(1998) 9 SCC 559] and **Power Finance Corp. Ltd. v. Pramod Kumar Bhatia**³ [(1997) 4 SCC 280].

4. A revision petition was filed by the respondents which was allowed by another division bench of this Court and the order is extracted below.

'Delay condoned

Heard counsel for the parties

We find that the scheme providing for voluntary retirement of employees, *prima*

facie discloses that once an option to voluntary retirement is exercised by an employee and the same is accepted by the employer the employee is not entitled to withdraw the voluntary retirement. The said scheme which has bearing on the case was not adverted to while deciding this appeal further the decision of this Court in **Balram Gupta v. Union of India & anr.** [JT 1987 (3) SC 480] **Raj Kumar v. Union of India** [1968 (3) SCR 857] and **Union of India v. Gopal Chandra Mishra** [1978 (2) SCC 301] which are applicable to this case were not considered while deciding the appeal. Moreover, the decision under review is likely to affect a large number of employees. We are, therefore, of the opinion that the judgment under review deserves to be reviewed. We, therefore, set aside the judgment dated 13.4.2000 and restore the appeal to its original number. The review petition is thus allowed. Let this appeal be posted for hearing. In review of the decision on review petition, the contempt petition is rejected

5. We have perused the whole scheme and we do not find any condition that once an option to voluntary retirement is exercised by an employee and the same is accepted by the employer the employee is not entitled to withdraw from voluntary retirement. This position is accepted at the bar while allowing the appeal the division bench of High Court in fact considered the ratio laid down in **Balram Gupta's case (supra)**

6. The short question to be decided is what was the effective date in the case in hand, before which the appellant could

¹. JT 2000 (6) SC 358

². JT 1987 (3) SC 480

³. JT 1997 (4) SC 300

have withdrawn his offer of the voluntary retirement under the scheme

7. The only contention raised before us by the learned counsel for the appellant is that in view of the law laid down by this Court since 1978, the appellant was within his right to withdraw his option for voluntary retirement even after its acceptance but before the actual date of release from the employment. In support of this contention, learned counsel has placed before us various decisions of this Court.

8. Per contra, the learned counsel for the respondent has contended that from the date of acceptance of the letter of voluntary retirement by the respondent, the relationship of employer and employee came to an end and, therefore, the appellant ceased to be an employee of the respondent w.e.f. 30th July, 1997. Learned counsel also sought to raise the question of financial burden on the respondent company, which we need not consider while deciding the legal issue involved in the present appeal.

9. A constitution bench of this Court in **Union of India & Ors. v. Gopal Chandra Misra & Others** [(1978) 2 SCC 301] in paragraph 50 held that the general principle is that in the absence of a legal, contractual or constitution bar, a 'prospective' resignation can be withdrawn at any time before it becomes effective and 'it becomes effective when it operates to terminate the employment or the office-tenure of the resignor.' (emphasis ours) As stated above in the present case in the VRS, there was no

indication regarding effective date of voluntary resignation and there is also no condition that once it was accepted, it could not be withdrawn.

10. In **Balram Gupta v. Union of India & Anr.**¹ [(1987) Supp. SCC 228] the principle laid down in **Gopal Chandra Misra** (supra) was summarised as follows:

"A complete and effective act of resigning office is one which severs the link of the resignor with his office and terminates his tenure."

11. In **Balram Gupta's case**, the appellant-employee offered voluntary retirement from service w.e.f. 31st March, 1981 and accordingly sent a letter within the notice period. However, he changed his mind and sent a letter on 31.1.1981 seeking to withdraw his notice of voluntary retirement but the request was disallowed by the concerned authority on the ground that the withdrawal of notice could only be with the specific approval of the authority. This Court held that the dissolution of the contract of employment would be brought about only on the date indicated i.e. 31.3.1981 and upto that date, the appellant continued as government employee. He is at liberty to withdraw his notice of voluntary retirement and for this purpose, prior approval is not required.

12. The decision in **J.N. Srivastava v. Union of India** [(1998) 9 SCC 559] is also to the same effect. This Court held as

¹ JT 1987 (3) SC 480

follows:

"It is now well-settled that even if the voluntary retirement notice is moved by an employee and gets accepted by the authority within the time fixed, before the date of retirement is reached, the employee has *locus poenitentiae* to withdraw the proposal for voluntary retirement. The said view has been taken by a bench of this Court in the case of **Balram Gupta v. Union of India**."

13. In Nand Keshwar Prasad v. Indian Farmers Fertilizers Cooperative Ltd. & Ors.¹ [(1998) 5 SCC 461], in paragraph 11, this Court reiterated that it is open to the employee concerned to withdraw letter of resignation before the date indicated in the notice of voluntary retirement. It was also observed therein:

"... it appears to us that the law is well-settled by this Court in a number of decisions that unless controlled by condition of service or the statutory provisions, the retirement mentioned in the letter of resignation must take effect from the date mentioned therein and such date cannot be advanced by accepting the resignation from an earlier date when the employee concerned did not intend to retire from such earlier date."

14. In Raj Kumar v. Union of India [(1968) 3 SCR 857] the normal rule has been stated as follows:

"When a public servant invited by a letter

¹ JT 1998 (6) SC 71

of his resignation, determination of his employment, his service normally stands terminated from the date on which the letter of resignation is accepted by the appropriate authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the public servant to withdraw his resignation after it is accepted by the appropriate authority in consonance with the rules governing the acceptance the public servant concerned has *locus poenitentiae* but not thereafter "

15. The above cases may not have direct application to the facts of the present case, however, the principles laid down therein deserve notice.

16. In Power Finance Corporation Ltd. v. Pramod Kumar Bhatia² [(1997) 4 SCC 280] this Court went a step further and observed thus:

"It is now settled legal position that unless the employee is relieved of the duty, after acceptance of the offer of voluntary retirement or resignation, jural relationship of the employee and the employer does not come to an end."

17. It was pointed out in that case that the acceptance of voluntary retirement was not unconditional and before the conditions could be complied with, the employee could withdraw from the scheme. On those facts, the above observations were made. It is not necessary to consider whether in all cases

² JT 1997 (4) SC 300

actual relief becomes the crucial date. However, the ratio of decision in **Balram Gupta's case** coupled with the observations of the constitution bench in **Gopal Chandra Misra's case** (underlined above) could usefully be applied to the present case.

18. Coming to the case in hand, the letter of acceptance was a conditional one inasmuch as, though option of the appellant for the voluntary retirement under the scheme was accepted but it was stated that the 'release memo along with detailed particulars would follow'. Before the appellant was actually released from the service, he withdrew his option for voluntary retirement by sending two letters dated August 7, 1997 and September 24, 1997, but there was no response from the respondent. By office memorandum dated 25th September, 1997, the appellant was released from the service and that too from the next day. It is not disputed that the appellant was paid his salaries etc. till his date of actual release i.e. 26 September, 1997, and, therefore, the jural relationship of employee and employer between the appellant and the respondent did not come to an end on the date of acceptance of the voluntary retirement and said relationship continued till 26th of September, 1997. The appellant admittedly sent two letters withdrawing his voluntary retirement before his actual date of release from service. Therefore, in view of the settled position of the law and the terms of the letter of acceptance, the appellant had *locus poenitentiae* to withdraw his proposal for voluntary retirement before the relation-

ship of employer and employee came to an end.

19. We, therefore, hold that the respondent could not have refused to accept the withdrawal of resignation of the appellant as it was sent before, the jural relationship of employee and employer, came to an end. Consequently, the impugned judgment is liable to be set aside, which we hereby do. The appellant shall be entitled to rejoin his duty and he shall be paid all his salaries and other benefits during the period he was out from the service. The learned counsel for the respondent has stated that by this time, the appellant might have retired from service on attaining the age of superannuation, if that be so, he shall be paid full salary and allowances for the entire period for which, he was out of service, ~~from the date of his retirement and thereafter~~. He shall be entitled to get all retiral benefits counting the above period as if he was in service.

20. We, therefore, allow the appeal by setting aside the impugned judgment. We leave the parties to bear their own cost.
