

## NOTES OF THE REGISTRY

## ORDERS OF THE TRIBUNAL

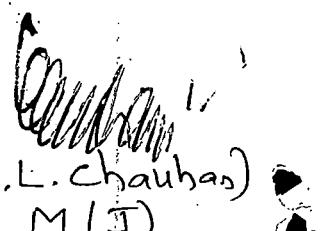
27.08

Mr. Anand Sharma, Counsel for applicant

~~Deceased~~ None present for respondents

Heard learned Counsel for applicant

For the reasons dictated separately,  
the OA is disposed of.

  
(M.L. Chauhan)  
M (I)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH

Jaipur, this the 02<sup>nd</sup> day of July, 2008

ORIGINATION APPLICATION NO. 181/2008

CORAM:

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER

Smt. Radhamaniamma K.C. wife of Shri A.V. Nair, aged about 48 years, resident of Gangapur, District Bhilwara, at present posted as Lab Assistant at Central Hospital Gangapur, District Bhilwara.

....APPLICANT

(By Advocate: Mr. Anand Sharma)

VERSUS

1. Union of India through Secretary, Ministry of Labour & Employment, Shramshakti Bhawan, Rabbi Marg, New Delhi.
2. The Welfare Commissioner, Office of Welfare Commissioner, Labour Welfare Organisation, B-115, Jatia Hills, Datanagar, Ajmer.
3. The Direct General (LW), Govt. of India, Ministry of Labour & Employment, Jaisalmer House, Mansingh Road, New Delhi.

.....RESPONDENTS

(By Advocate: ----

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

"In view of the facts and grounds mentioned hereinabove, it is, therefore, prayed that this Original Application may kindly be allowed and relevant record may kindly be called and be perused, if this Hon'ble Tribunal so pleases and by way of issuing appropriate order/direction, the order dated 05.05.2008 issued by the Under Secretary to the Govt., Ministry of Labour & Employment, Govt. of India, New Delhi, orders dated 17.01.2008 and 12.05.2008 issued by the Welfare Commissioner, Govt. of India, Ministry of Labour & Employment, Ajmer may kindly be declared arbitrary and illegal and same may kindly be quashed and set aside.

The respondents may kindly be directed to allow the applicant to work on the post of Lab Assistant at Central Hospital, Gangapur, District Bhilwara and after its complete closure, the respondents may further be directed to adjust the applicant in Medical Mobile Units, which are running for health check-up camps in Ajmer Region.

On in the alternative, the respondents may kindly be directed to accept the application of voluntary retirement w.e.f. 01.11.2008 and till the date of retirement she may be allowed to continue at Central Hospital, Gangapur, District Bhilwara or any any other place in Ajmer Region.

The respondents may also be directed to release due salary of the applicant.

Any other order or direction, which this Tribunal deems fit in favour of the applicant may kindly be issued.

2. When the matter was listed on 19.05.2008, notice was confined to the alternative prayer of the applicant for voluntary retirement of the applicant w.e.f. 01.11.2008. Thereafter, the applicant moved a Misc. Application No. 173/2008, which application was decided on 30.05.2008. At this stage, it will be useful to reproduce the said order in extenso, which will have bearing on the decision of this case-

"The applicant has moved this Misc. Application thereby praying that the impugned order of transfer may be stayed till the date of voluntary retirement of the applicant.

In this case, the applicant has earlier filed the OA No. 32/2008. This Tribunal vide judgement dated 07.02.2008 has upheld the validity of the transfer order as the transfer of the applicant was effected on account of closure of the Hospital at Gangapur. However, the limited relief was granted to the applicant to the extant that *in case the applicant can be adjusted as per the recommendation by the authority, her request may be considered sympathetically by exploring the possibility of adjusting the applicant in Ajmer Region and the respondents were directed to maintain status quo till the representation of the applicant is not decided.* Now the respondents have decided the representation of the applicant thereby rejecting his claim.

When the matter was listed on 19.05.2008, notice was confined only to the extant of acceptance of the prayer of the applicant for voluntary retirement w.e.f. 01.11.2008. By way of this MA, the applicant has stated that he has moved a fresh representation dated 20.05.2008 whereby she has stated that in case voluntary retirement w.e.f. 01.11.2008 cannot be accepted, then the same may be accepted w.e.f. 05.08.2008. It is on the basis of subsequent development, the applicant has prayed that interim stay may be granted to the applicant. I am of the view that the present MA is wholly misconceived as once the validity of the transfer of the applicant has been upheld by this Tribunal, it is not permissible to stay the operation of that order by way of MA.

**Accordingly, the MA is dismissed with no order as to costs."**

3. The matter was listed before the Bench today. As per the report submitted by the Registry, notice issued to the respondents vide Registered AD have not been received back. Learned counsel for the applicant submits that matter may be decided today as urgency is involved and further argued that even the respondents should be proceeded ex-parte as they have failed to appear before this Tribunal. Since the learned counsel for the applicant is praying that this application should be decided today, as such I am proceeding with the matter. From the facts as disclosed in the order dated 30.05.2008, relevant portion of which has been extracted in earlier part of this order, it is evident that the only issue which require determination by this Tribunal is regarding acceptance of the application of the applicant for voluntary retirement w.e.f. 01.11.2008 as the

subsequent application for voluntary retirement, which was annexed with the MA No. 173/2008, was conditional application for acceptance of her request for voluntary retirement w.e.f. 05.08.2008 in case the same is not accepted w.e.f. 01.11.2008, which application cannot be considered for the purpose of disposal of this OA in view of the case set up by the applicant in the OA.

4. Thus from the facts, as stated above, the case of the applicant is to be considered regarding acceptance of her application for voluntary retirement w.e.f. 01.11.2008. The question which requires my consideration is whether mandamus can be issued to the respondents to give direction to the respondents to accept the application of the applicant for voluntary retirement w.e.f. 01.11.2008. I am of the view that such a request cannot be accepted at this stage being premature as the applicant has requested for acceptance of his voluntary retirement w.e.f. 01.11.2008 which period has not elapsed as yet and there is sufficient time available for the respondents to pass order on the application of the applicant prior to the date of acceptance of application for voluntary retirement w.e.f. 01.11.2008. As such, according to me the present OA is premature. Further there is no rule or instructions which stipulate that the application for voluntary retirement has to be considered immediately after its submission so as to issue writ of mandamus. Rather from the submission made and material placed on record, it appears that in the garb of submitting an application for voluntary retirement, applicant is evading her joining pursuant to transfer order dated 17.01.2008 and wants to remain absent from service till 01.11.2008, the date from which the applicant wants

her voluntary retirement accepted to which action this Tribunal cannot be a party. Further such an action of the applicant cannot be said to be in public interest.

5. At this stage, I may fail in my duty if I do not notice the further contention of the learned counsel for the applicant on the basis of the documents shown during the course of arguments. This is the order/note dated 01.04.2008 whereby the request of one Shri Janki Lal Lohar, who is also similarly situated, was accepted and he was ordered to be retired w.e.f. 09.04.2008. On the basis of this document, learned counsel for the applicant submits that similar order could also have been passed in the case of the applicant. I have given due consideration to the submission made by the learned counsel for the applicant, I am of the firm view that the contention of the applicant deserves out-right rejection in as much as, that in the case of Janki Lal Lohar, the order regarding voluntary w.e.f. 09.04.2008 was passed on 01.04.2008 i.e. ten days prior to the effective date of retirement but in the instant case, the applicant has made application for voluntary retirement on 28.04.2008 i.e. about six months prior to the date when the application of the applicant for voluntary retirement was to become effective. Thus there are still sufficient time left with the respondents to consider the application of the applicant for voluntary retirement w.e.f. 01.11.2008. Thus the applicant cannot draw any assistance based on the acceptance of voluntary retirement of Janki Lal Lohar w.e.f. 09.04.2008. If no order is passed by the respondents on the application of the applicant for voluntary retirement till 15.10.2008, it

will be open for her to approach this Tribunal again and in that eventuality, appropriate direction can be given to the respondents.

6. With these observations, the OA is dismissed with no order as to costs.



(M.L. CHAUHAN)  
MEMBER (J)

AHQ