

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**

No.O.A.350/01019/2015

Date of order : 27.7.16 .

Present : Hon'ble Mrs. Bidisha Banerjee, Judicial Member

Sm. Munmun Bhattacharyya

Vs.

Union of India & Others
(Central Excise and Service Tax)

For the applicant : Mr. B. Nandi, counsel
For the respondents : Mr. S. Banerjee, counsel

ORDER

The applicant, claiming herself to be the dependent sister of Debarshi Bhattacharyya who served as Inspector of Central Excise and Customs and voluntarily retired from service on 17.06.2013 granted in terms of Rule 48(A) of Central Civil Servants(Pension) Rules, has sought for an appointment to any post on compassionate ground in terms of her application dated 21.01.2015 (Annexure A-5, page19 of the O.A.).

2. The respondents have dispelled the claim on the ground that benefits of the scheme of compassionate appointment is not applicable to a an employee to whom retirement was granted under Rule 48 A and 48(3-A) of CCS(Pension) Rules, as such scheme of compassionate appointment is applicable only when a Government Servant retires under Rule 38 of CCS(Pension) Rules, 1972. In the reply the respondents have categorically stated that the employee, Sri Debarshi Bhattacharyya never submitted any medical certificate of incapacity issued by any prescribed medical authority in terms of Rule 38 of CCS(Pension) Rules. Further, there were no records to show that he had informed the department about

his intention to appear before the specified Medical Authority. On the contrary, he submitted a fit certificate issued by the Head of the Department of Psychiatry, Burdwan Medical College and Hospital dated 11.03.2013 which clearly demonstrates that the employee was not incapacitated to perform his duties efficiently. The employee made a prayer for voluntary retirement(V.R.) under Rule 48A and Rule 48(3-A) of CCS(Pension) Rules which was granted.

3. Ld. counsel for the parties were heard and materials on record perused.

4. Rule 38 of CCS(Pension) Rules is extracted hereunder for clarity:-

"38. Invalid pension

(1) ***Invalid pension may be granted*** if a Government servant retires from the service on account of any bodily or mental infirmity which permanently incapacitates him for the service.

(2) A Government servant ***applying for an invalid pension shall submit a medical certificate of incapacity from the following medical authority, namely:-***

(a) a Medical Board in the case of a Gazetted Government Servant and of a non-Gazetted Government servant whose pay, as defined in Rule 9(21) of the Fundamental Rules, exceeds [Twenty-one thousand rupees] per mensem;

(b) Civil Surgeon or a District Medical Officer^{or} Medical Officer of equivalent status in other cases.

NOTE 1 – No medical certificate of incapacity for service may be granted unless the applicant produces a letter to show that the Head of his Office or Department is aware of the intention of the applicant to appear before the Medical Authority. The Medical Authority shall also be supplied by the Head of the Office or Department in which the applicant is employed with a statement of what appears from official records to be the age of the applicant. If a Service Book is being maintained for the applicant, the age recorded therein should be reported.

NOTE 2 – A lady doctor shall be included as a member of the Medical Board when a woman candidate is to be examined.

(3) The form of the Medical Certificate to be granted by the Medical Authority specified in sub-rule (2) shall be as in Form 23.

B

(4) Where the Medical Authority referred to in sub-rule(2) has declared a Government servant fit for further service of less laborious character than that which he had been doing, he should, provided he is willing to be so employed, be employed on lower post and if there be no means of employing him even on a lower post, he may be admitted to invalid pension.

(5) Deleted."

A cursory glance at the provision supra would exemplify and demonstrate that the provision applies to persons retiring on medical ground asking for invalid pension, whereas the present applicant has sought for employment assistance. Therefore, rejection of the case for employment assistance on the ground that action under Rule 38 was not invited, is improper.

5. Rule 48 of CCS(Pension) Rules envisages the following :-

"48. Retirement on completion of 30 years' qualifying service

(1) At any time after a Government servant has completed thirty years' qualifying service-

(a) he may retire from service, or

(b) He may be required by the Appointing Authority to retire in the public interest

and in the case of such retirement the Government servant shall be entitled to a retiring pension:

Provided that-

(a) a Government servant shall give a notice in writing to the Appointing Authority at least three months before the date on which he wishes to retire; and

(b) the Appointing Authority may also give a notice in writing to a Government servant at least three months before the date of which he is required to retire in the public interest or three months' pay and allowances in lieu of such notice:

Provided further that where the Government servant giving notice under Clause(a) of the preceding proviso is under suspension, it shall be open to the Appointing Authority to withhold permission to such Government servant to retire under this rule:

Provided further that the provisions of Clause (a) of this sub-rule shall not apply to a Government servant, including scientist or technical expert who is-

- (i) on assignments under the Indian Technical and Economic Co-operation (ITEC) Programme of the Ministry of External Affairs and other aid programmes,
- (ii) posted abroad in foreign based offices of the Ministries/Departments.
- (iii) On a specific contract assignment to a foreign Government, unless, after having been transferred to India, he has resumed the charge of the post in India and served for a period of not less than one year.

(1-A)(a) A Government servant referred to in Clause(a) of the first proviso to sub-rule(1) may make a request in writing to the Appointing Authority to accept notice of less than three months giving reasons therefor.

(b) On receipt of a request under Clause (a), the Appointing Authority may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, Appointing Authority may relax the requirement of notice of three months on the condition that the Government servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

(2) A Government servant, who has elected to retire under this rule and has given the necessary intimation to that effect to the Appointing Authority, shall be precluded from withdrawing his election subsequently except with the specific approval of such authority.

(3) For the purpose of this rule, the expression 'Appointing Authority' shall mean the authority which is competent to make appointments to the service or post from which the Government servant retires."

Rule 48 A lays down the following:-

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

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

Provided that this sub-rule shall not apply to a Government servant, including scientist or technical expert who is -

- (i) on assignments under the Indian Technical and Economic Co-operation (ITEC) Programme of the Ministry of External Affairs and other aid programmes.

B

- (ii) posted abroad in foreign based offices of the Ministries/Departments,
- (iii) on a specific contract assignment to a foreign Government, unless, after having been transferred to India, he has resumed the charge of the post in India and served for a period of not less than one year.

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

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

(3) Deleted

(3-A)(a) A Government servant referred to in sub-rule(1) may make a request in writing to the Appointing Authority to accept notice of voluntary retirement of less than three months giving reasons therefor;

(b) On receipt of a request under Clause (a), the Appointing Authority subject to the provisions of sub-rule(2), may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the Appointing Authority may relax the requirement of notice of three months on the condition that the Government servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

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

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

(5) Omitted.

(6) This rule shall not apply to a Government servant who-

- (a) retires under the Special Voluntary Retirement Scheme relating to voluntary retirement to surplus employees, or**
- (b) retires from Government service for being absorbed permanently in an Autonomous Body or a Public Sector Undertaking to which he is on deputation at the time of seeking voluntary retirement.**

EXPLANATION – For the purpose of this rule, the expression "Appointing Authority" shall mean the authority which is competent to

make appointments to the service or post from which the Government servant seeks voluntary retirement."

6. Without any iota of doubt it would seem that the provisions of Rule 48 enumerated supra would not apply as the employee had not completed 30 years of service. Rather Rule 48 A would have irrefutably and indubitably apply to him if he was seeking voluntary retirement upon completion of 20 years of service with intention to retire voluntarily. However, under such provisions, notice had to be accepted or else it would automatically take effect after expiry of three months from the notice date, if not refused earlier, and acceptance thereafter would become a futile exercise.

7. In the aforesaid background the following facts could be noted:-

(i) During the period from February, 2007 till May, 2012 the employee had been suffering from Paranoid Schizophrenia and on several occasions he was on leave. On 05.04.2008 Dr. Asim K. Mallick, Professor of Neuro Psychiatry opined that he was suffering from paranoid schizophrenia and his mental state was not stable and he was unfit for doing his normal duties. On several occasions the authorities had to grant extraordinary leave, for example from 19.10.2005 to 20.02.2007. On 21.02.2007 the applicant even prayed for voluntary retirement on the ground that he was suffering from acute depression and was not in a position to continue his service and therefore, could not attend his duties for 17 months and that he had already completed 20 years of service. The authorities, however, never directed him to appear before any Medical Board. On 18.04.2011, the applicant again prayed for extraordinary leave due to his illness. As on 12.04.2011 he was certified by Dr. Asim K. Mallick that he was suffering from Paranoid Schizophrenia with deterioration of personality.

(ii) On 25.06.2011 Dr. Asim K. Mallick, Professor and HOD, Department of Psychiatry, IPGMER, Kolkata, under whose treatment the applicant was so long, on being asked to authenticate the medical document, informed Mr. J.A. Khan, the Additional Commissioner of Service Tax, Kolkata the following:-

"In reference to your letter C.No.11(39)9-ET/U Absence/S. Tax/Kol/10/12575 dated 22.06.2011 want to inform you that Sri Debarshi Bhattacharya 49 year Hindu male S/O Late Debaprasad Bhattacharya of Majilapore, Bhattacharya Para, Joynagar is under my treatment for last few years. He has been suffering from Paranoid Schizophrenia with gross deterioration of personality.

I have last examined him on 12.04.2011. At that time his mental status was not stable and he is very much non-compliant to treatment procedure. He was not fit to join his duty at that time.

The medical certificates I have issued so far are genuine & true."

(iii) However, the authorities never thought it fit to examine the employee by a Medical Board. On 23.03.2012 the doctor further certified that there was no satisfactory improvement and he was not fit to join his duties, producing which the applicant sought for grant of extraordinary leave. Finally on 11.03.2013 Dr. Asim Kumar Mallick certified that the employee had recovered from his illness and was fit to resume his duties in Government service, whereafter on 12.03.2013 the employee sought for voluntary retirement explicitly specifying therein that he sought for the same on medical ground. It was accepted on 17.06.2013 treating it as retirement in terms of Rule 48 A of CCS(Pension) Rules, but after expiry of three months from the date of notice, by which time acceptance of notice had no meaning as notice under 48A(1) or (3-A) becomes effective after three months from notice date in terms of Rule 48(A)(2) .

(iv) The Id. counsel for the applicant during the course of hearing while drawing my attention to Annexure A-2 to the O.A. submitted that the

applicant had unfortunately quoted Rule 48 wrongly. Nevertheless, he had sought for voluntary retirement on medical ground clearly expressing his intention and specifying therein as under:-

".....it is difficult for me to continue office after having been suffered from prolonged illness like paranoid schizophrenia."

Therefore, he had an intention to retire on medical ground as he was suffering from prolonged illness like Paranoid Schizophrenia. The respondents on the contrary treated it as normal retirement under Rule 48A and Rule 48(3-A). If the retirement was treated as a retirement under Rule 38, he would be entitled to ask for employment assistance in favour of a family member.

8. Therefore, the question that has come up for consideration is, whether the tendering of voluntary retirement on 12.03.2013 would be considered as VR on medical ground to enable the employee to seek employment assistance for his family, or a VR simpliciter under Rule 48(A) *ibid.*

9. The Hon'ble Apex Court in **Shashikala Devi vs. Central Bank of India & Ors.** [AIR 2015 SC-2434] was dealing with a case of resignation or request for voluntary retirement was submitted by an employee who had put in sufficient service. The reason given for leaving service was his failing health. He requested for early retirement as was required for his sustenance and treatment. The Hon'ble Apex Court found that the intention to waive his right for pension by putting in resignation could not be attributed to the employee. The Hon'ble Supreme Court held that the letter sent by the employee had to be treated as "Voluntary Retirement" and not "Resignation". The Hon'ble Apex Court succinctly held that "the words 'legally enforceable right' have to be clear, unequivocal, conscious and with

full knowledge of consequences" and that "interpretation of statutes which tends to restrict, narrow down or defeat its beneficial provisions, has to be avoided". Relevant portions of the said judgment is as under:-

"3. A plain reading of the above makes it manifest that the employee sought relief from the duties attached to his job on account of his medical condition that had rendered him physically disabled to which he has made extensive reference in the letter itself. The letter relies upon and encloses copies of medical prescriptions from the hospital where the employee was undergoing treatment in support of his prayer. ***It was because of his incapacity arising out of his failing health that the employee prayed for being relieved of his service in the bank. What is important is that the employee had prayed for release of his terminal benefits to enable him to undergo treatment for his illness.*** The letter mentions that his terminal benefits are only financial support for his livelihood and the treatment that he required."

Delving into the provisions of voluntary retirement under the relevant rules the Hon'ble Apex Court observed :-

"6. From a reading of the above, ***it is evident that an employee who has completed twenty years of qualifying service is entitled to seek voluntary retirement from service of the bank provided he gives a notice of not less than three months in writing to the appointing authority in that regard. What is important is that in terms of proviso to Regulation 29(2), if the appointing authority does not refuse to grant permission for retirement before the expiry of the period specified in the said notice, the retirement becomes effective from the date of the expiry of the said.*** It is also noteworthy that in terms of Regulation 29(3)(a) the appointing authority is competent to curtail the period of notice of three months in appropriate cases subject to the condition that the employee shall not apply for commutation of his pension before the expiry of the notice period."

7. In the case at hand, Mauzi Ram the deceased employee had rendered nearly 34 years of service in the respondent-Bank. He was, therefore, qualified to receive pension in terms of the Regulations applicable to him. It is also evident from a reading of Regulation 29 that the deceased-employee was entitled to seek voluntary retirement in terms of Regulation 29 for he had completed more than twenty years of service by the 8th October, 2007. As on 8th October, 2007 the deceased-employee was entitled either to resign from service or to seek premature retirement in terms of Regulation 29 (supra). The pension in that backdrop is whether letter dated 8th October, 2007 was a letter of resignation simpliciter or could as well be treated to be a letter seeking voluntary retirement. The High Court, as seen earlier, has taken the view that the letter was one of resignation that resulted in the forfeiture of past service under Regulation 22 of the

Regulations. The High Court appears to have been impressed by the use of the word "resignation" in the employee's letter dated 18th October, 2007. The use of the expression "resignation", however, is not, in our opinion, conclusive. That is, in our opinion, so even when this Court has always maintained a clear distinction between "resignation" and "voluntary retirement". Whether or not a given communication is a letter of resignation simpliciter or can as well be treated to be a request for voluntary retirement will always depend upon the facts and circumstances of each case and the provisions of the Rules applicable. The distinction between the expressions "resignation" and "voluntary retirement" was elaborately discussed by this Court in *UCO Bank and Ors. v. Sanwar Mal* (2004)4 SCC 412: (AIR 2004, SC 2135 : 2004 AIR SCW 2294) where this Court was examining the provisions of UCO Bank (Employees') Pension Regulations, 1995 applicable to a bank employee who had resigned from service after giving an advance notice to the appointing authority. So also in *Reserve Bank of India and Anr. v. CECIL Dennis Solomon and Anr.* (2004)9 SCC 461: (AIR 2004 SC 3196: 2004 AIR SCW 1402) this Court has considering the provisions of the Reserve Bank of India Pension Regulations, 1990 while it made a distinction between what is resignation on the one hand and voluntary retirement on the other. At the same time a long line of decisions have recognized that pension is neither a bounty nor a matter of grace but is a payment for past services rendered by the employee. Decisions of this Court in *D.S. Nakara and Ors. v. Union of India* (1983) 1 SCC 305 : (AIR 1983 SC 130) and *Chairman Railway Board and Others v. C.R. Rangadhamaiah and Ors.* (1997) 6SCC 623 : (AIR 1997 SC 3828 : 1997 AIR SCW 3747), are clear pronouncements on the subject. Reference may also be made to *Sudhir Chandra Sarkar v. Tata Iron and Steel Co. Ltd. and Ors.* (1984)3 SCC 369 : (AIR 1984 SC 1064) where this Court observed:

"18. For centuries the Courts swung in favour of the view that pension is either a bounty or a gratuitous payment for loyal service rendered depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court. This view held the field and a suit to recover pension was held not maintainable. With the modern notions of social justice and social security, concept of pension underwent a radical change and it is now well settled that pension is a right and payment of it does not depend upon the discretion of the employer, nor can it be denied at the sweet will or fancy of the employee. *Deokinandan Prasad v. State of Bihar* (1971)2 SCC 330 : (AIR 1971 SC 1409); *State of Punjab v. Iqbal Singh* (1976) 2 SCC 1 : (AIR 1976 SC 667) and *D.S. Nakara v. Union of India* (1983)1 SCC 305 : (AIR 1983 SC 130). If pension which is the retiral benefit as a measure of social security can be recovered through civil suit, we see no justification in treating gratuity on a different footing. Pension and gratuity in the matter of retiral benefits and for recovering the same must be put on par.

(Emphasis supplied)"

8. It is also well settled by several decisions of this Court that while interpreting a statute the Court ought to keep the legislative intent in mind and eschew an interpretation which tends to restrict, narrow down or defeat its beneficial provisions. In *S. Appukuttan v. Thundiyl Janaki Amma and Anr.* (1988) 2 SCC 372 : (AIR 1988 SC 587) this Court observed:

"16. After the arguments were concluded, learned counsel for the respondents have circulated a copy of the judgment of this Court in CA No.165 of 1974 etc. *K. M. Mathew v. Hamsa Haji* (1987)3 SCC 326: (AIR 1987 SC 1326) delivered on 29-4-1987 wherein S. 7-D of the Kerala Land Reforms Act, 1963 as amended by the Kerala Land Reforms (Amendment) Act, 1969 has been interpreted as conferring benefit thereunder only on persons whose occupation of the private forests or unsurveyed lands had a lawful origin and not on persons in unlawful occupation based on trespass or forcible and unlawful entry. We have carefully considered the judgment and find that the pronouncement therein does not in any way lend support to the contentions of the respondents herein. The scheme of Ss. 7-A, 7-B, 7-C, 7-D, 8 and 9 of the Kerala Land Reforms Act, 1963 is entirely different and this position is succinctly brought out by the following passage in the decision referred to above. The Court had summed up the scheme of the Act in the following words : (SCC p.330, Para 5) : (Para 5 of AIR).

On a careful scrutiny of the aforesaid provision, it becomes abundantly clear that the intention of the legislature was to grant protection only to persons whose possession had a lawful origin in the sense that they had either bona fide believed the lands to be Government's land of which they could later seek assignment or had taken the lands on lease from persons whom they bona fide believed to be competent to grant such leases or had come into possession with the intention of attorning to the lawful owners or on the basis of arrangements like varam etc. which were only in the nature of licences and fell short of a lease-hold right. It was not within the contemplation of the legislature to confer the benefit of protection on persons who had willfully trespassed upon lands belonging to others and whose occupation was unlawful in its origin. The expression "in occupation" occurring in S. 7-D must be construed as meaning "in lawful occupation."

9. Again in *Vatan Mal v. Kailash Nath* (1989)3 SCC 79: (AIR 1989 SC 1534) this Court observed:

"9. The intention of the legislature to confer the benefit of S.13-A to all tenants, provided actual eviction had not taken place, could further be seen by the terms of sub-clause (c). Under sub-clause(c) the provisions of sub-clauses (a) and (b) have been made applicable mutatis mutandis to all appeals or

applications for revision preferred or made after the commencement of the amending Ordinance and the only stipulation contained is that the tenant preferring an appeal or an application for reversion should apply to the Court within a period of thirty days from the date of presentation of the memorandum of appeal or the application for reversion for giving him the benefit of S.13-A....."

10 Reference may also be made to Employees' State Insurance Corporation v. R. K. Swamy and Ors.(1994)1 SCC 445 : (AIR 1994 SC 1154 : 1994 AIR SCW 428) where this Court observed:

"14. There is no doubt at all that the said Act is beneficent legislation. If, therefore, it is reasonably possible so to construe the word "shop", as to include the activity of an advertising agency within it, that construction must be preferred."

11. To the same effect is a later decision of this Court in Union of India and Anr. v. Pradeep Kumari and Ors.(1995)2 SCC 736 : (AIR 1995 SC 2259 : 1995 AIR SCW 1834) where this Court declared:

"8. We may, at the outset, state that having regard to the Statement of Objects and Reasons, referred to earlier, the object underlying the enactment of S. 28-A is to remove inequality in the payment of compensation for same or similar quality of land arising on account of inarticulate and poor people not being able to take advantage of the right of reference to the Civil Court under S. 18 of the Act. This is sought to be achieved by providing an opportunity to all aggrieved parties whose land is covered by the same notification to seek redetermination once any of them has obtained orders for payment of higher compensation from the reference Court under S.18 of the Act. Section 28-A is, therefore, in the nature of a beneficent provision intended to remove inequality and to give relief to the inarticulate and poor people who are not able to take advantage of right of reference to the Civil Court under S.18 of the Act. In relation to beneficent legislation, the law is well settled that while construing the provisions of such a legislation the Court should adopt a construction which advances the policy of the legislation to extend the benefit rather than a construction which has the effect of curtailing the benefit conferred by it. The provisions of S.28-A should, therefore, be construed keeping in view the object underlying the said provision."

(Emphasis supplied)

12. Let us now examine the true purport of the letter submitted by the deceased employee in the light of the above principles. Two

distinct aspects stand out from the record. The first is that the deceased employee had served for more than 34 years in the bank and was, therefore, entitled to seek voluntary retirement if he chose to leave prematurely. The second aspect which is equally important is that the employee had chosen to leave the employment not because of any disciplinary or other action proposed against him or any order of transfer or posting with which he was unhappy or because any proceedings had been started that could have visited him any civil consequence if he had continued in service, but because of his physical inability to continue in service on account of diseases with which he was stricken. This is evident from the fact that not only in the letter, but also in documents enclosed therewith the employee has laid great stress on the reasons for leaving the service prematurely. No such reasons were necessary if the employee actually intended to resign in the true sense of that term. Reasons why he was quitting were obviously meant to support his case that he was doing so under the compulsion of the circumstances. This is evident from letter dated 23rd November, 2007 from the Regional Manager which has recognized the poor health condition of the deceased-employee and sanctioned 165 days without pay leave in his favour. It is also evident from letter dated 29th November, 2007 by which the acceptance of the request of the employee was communicated to him that the employer had taken note of his failing health, expressed the management's sympathy with him and wishing him early recovery from his illness. The letter recognizes the commitment of the employee to his duties and the contribution made by him in the growth of the organization. To that extent there is thus no communication gap between the employee and the employer. The employee's case, however, is that all that he intended to do was to seek premature/voluntary retirement from service. This is, accordingly to the employee, evident also from his letter dated 18th December, 2007 addressed with three weeks of the acceptance of the request by the bank. In the said letter the deceased- employee, inter alia, said:

"As such, as per the said representation I requested to accept my resignation from the service. The whole reason and purpose, which I have submitted and stated through my said representation and my left over service of one and half year have forced my conscience to seek voluntary retirement from the service and not resignation from the service in his 'literal meaning.'"

The Hon'ble Apex Court held:-

"19. In the result this appeal succeeds and is hereby allowed. The impugned order passed by the High Court is, hereby, set aside and the writ petition filed by the deceased employee allowed with a direction to the respondent-Bank to treat letter dated 8th October, 2007 as a notice for voluntary retirement of the employee and for curtailment of three months notice period. Depending upon the view the competent authority may take on the question of curtailment of the notice period and/or deduction of three months salary from out of the retiral benefits of the deceased-employee, the deceased-

employee's claim for payment of retiral benefits due under the relevant rules including pension shall be processed and released in favour of the appellant-widow as expeditiously as possible but not later than six months from the date of a copy of this order is served upon the bank. In the event of the bank's failure to comply with the directions within six months as indicated above, the amount payable to the employee and after his death his widow, shall start earning interest @ 10% p.a. from the date the period of six months expires. The parties are left to bear their own costs."

10. In the present case, it could be noted that the applicant was on leave for a long time as he was suffering from Paranoid Schizophrenia and was unable to perform his job. It was duly certified and accepted by the authorities while granting him extraordinary leave. He had sought for voluntary retirement on medical grounds but unfortunately quoted Rule 48 due to which he was deprived of the benefits of seeking employment assistance for a member of his family.

11. In view of the decision supra, "if the waiver of a legally enforceable right has to be clear, unequivocal, conscious and with full knowledge of consequence", the letter by which the applicant sought for voluntary retirement could not be treated as a waiver of his legal right to seek voluntary retirement on medical ground. Admittedly and undoubtedly the reasons for taking VR was his failing health. The authorities being model employer, had to consider his plight in the proper perspective and ought to have reminded him of his legal rights as Rule 38 envisages instead of being hyper technical in their approach, and restricting his rights under Rule 48(A). In the present case as already enumerated hereinabove, their acceptance of VR notice beyond three months had no effect. What was important was the intention of the employee to retire on medical ground, which gets adequately demonstrated in his letter and supported by the Medical Certificates submitted before the authorities from time to time.

12. In view of the above, the O.A. is disposed of with a direction upon the authorities to pass appropriate reasoned and speaking order in the light of the decision of the Apex Court extracted supra and observations made hereinabove, within 2 months from the date of communication of this order.

No cost.

(BIDISHA BANERJEE)
Judicial Member

sb