CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No.306/2015

Dated this the 24th day of February, 2017

CORAM: HON'BLE MS. B.BHAMATHI, MEMBER (A)

A.P.Sasurkar,
Ex-Junior Engineer,
BSNL, Telephone Distt. Pune,
Pune-411002
Residing at Chandrama DSK Vishwa,
Dhayari,
Pune-411041. ... **Applicant.**
(**By Advocate Shri G.B.Kamdi**)

Versus.

1. Bharat Sanchar Nigam Ltd.,
   Through Chairman & Managing Director,
   Bharat Sanchar Bhawan H C Mathur
   Lane, Janpath,
   New Delhi-110001.
2. The Chief General Manager,
   BSNL, Telecom Maharashtra Circle,
   Admn Bldg., Juhu Road,
   Santacruz (W),
   Mumbai-400054.
3. The Union of India
   Through Secretary,
   Ministry of Communication & IT,
   Sanchar Bhawan, Ashoka Road,
   New Delhi-110001.
4. The Principal General Manager,
   BSNL Telephone District Pune,
   Bajirao Road,
   Pune-411002. ...**Respondents.**

(By Advocate Shri V.S. Masurkar)

Reserved on 02.02.2017.
Pronounced on 24.2.2017

O R D E R

Per:-HON'BLE MS.B. BHAMATHI, MEMBER (A)

This OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

> "(a) To allow the Original application.
>
> (b). This Hon'ble Tribunal may be pleased to call for record of the case and after going through its propriety and legality be pleased to direct the respondent to settle the claim of the applicant for pensionary benefit.
>
> (c) To pass any other just and appropriate orders this Hon'ble Tribunal may deem fit, proper and necessary if the facts and circumstances of the case.
>
> (d) The cost of this original application please be provided".

2. The case of the applicant is that he was appointed as Telephone Operator in Pune District on 23.8.1968. He was thereafter appointed as Repeater Station Assistant (RSA) in 1969 and then he was promoted as Junior Telecom Officer (JTO) in July, 1977 and posted in PCM, Optic Fibre Cable Division in Pune.

2.1 After completion of 12 years of service, due to certain domestic issues applicant sought resignation vide letter dt. 20.2.1981 requesting that his resignation be accepted w.e.f. 22.3.1981. The Competent Authority accepted the resignation

w.e.f. 21.3.1981 which was communicated to applicant vide letter dt. 21.11.1981.

2.2 In the meantime, the applicant had overcome his domestic difficulties and requested the department to re-appoint him vide letter dt. 6.3.1987, but no response was received. The applicant represented vide letter dt. 30.3.2000 for pensionary benefit giving the reference to a judgment of the Hon'ble High Court of Mumbai in 1998. Applicant again represented on 15.10.2013. But no response was given by the respondents. The applicant remained jobless with no pensionary benefits.

2.3 The applicant again reminded on 7.2.2014. In response to the above representation, the Accounts Officer of the respondent referred the matter to the CAO in the office of CGM, BSNL, Maharashtra Circle, Mumbai for instructions. The fact that no service record was available was mentioned in the letter dt. 7.6.2014. The ground taken by the Accounts Officer is not tenable since Service Book is permanent record of the department and the respondents were only trying to avoid grant of pensionary benefits without any proper reason.

2.4 As per Rule 49(2)(b) of CCS (Pension) Rules, 1972, the applicant is entitled for pensionary benefits after qualifying service of 10 years.

2.5 Applicant has relied upon the judgment of the Hon'ble High Court of Bombay had decided similar issue of pension in the case of **Mrs.Shaila D.Varekar v. The State of Maharashtra & Another (1999 (1) Bom CR 685)** while submitting his representation dated 30.3.2000.

2.6 As per the Judgment of the Hon'ble Supreme Court in **J.K.Cotton Spinning & Weaving Mills Company Ltd., Kanpur v. State of U.P. and Ors. {(AIR) 1990 SC 1808},** the applicant is entitled for pension even though he had submitted resignation, since it was held that resignation amounts to voluntary retirement.

2.7 The CAT, Jabalpur Bench had also considered similar issue in **A.P.Shukla v. Union of India (O.A. No.623/1991)** decided on 13.10.1995, wherein vide paras 4, 15 and 16 of its order directed that the resignation of the applicant was to be treated as superannuation for all purposes, on the ground that when an employee voluntarily tenders resignation it is an act by which he voluntarily gives up his job.

2.8 Similar issues were decided by the CAT, Principal Bench, New Delhi in the case of **Bimla Devi v. Union of India and Ors. (1992 (2) SLJ 310).**

2.9 The Hon'ble High Court of Madras in the case of **S.Sankaran v. The Accountant General** decided on 30.8.2010, relying upon the judgment in **M/s.J.K. Cotton Spinning & Weaving Mills Co. Ltd., Kanpur (supra)** took a similar view.

2.10 In the representation to the Principal General Manager vide letter dt. 15.10.2013, applicant had relied upon the judgment of the Hon'ble Supreme Court in the case of **D.S.Nakara & Ors. v. Union of India (AIR 1983 SC 130)** in support of his claim.

3. In reply to the O.A., a preliminary objection has been raised by the respondents stating that this is a case of resignation given by the applicant and accepted by the respondents way back on 21.11.1981. The CAT, Principal Bench in the case of **V.K.Mehra v. The Secretary, Ministry of Information & Broadcasting, New Delhi (A.T.R. 1986 C.A.T. 203),** held that Tribunal has no jurisdiction to try and entertain the matter prior to 1.11.1982 and hence dismissed the O.A. for want of

jurisdiction. The said order covers the case of applicant.

3.1 The cause of action in the instant case is resignation given by the applicant on 29.11.1981 and its consequential effect. This O.A. has been filed on 5.5.2015 and hence the O.A. suffers from delay and laches. This is a case of resignation and not of pension. Pensionary benefits are consequential in nature and delay and laches do play role in this matter and hence O.A. is not maintainable.

3.2 The contention of the applicant that no reply was given by the respondents is not correct. The applicant applied for pensionary benefits on 15.10.2013 after a gap of 32 years and hence the case is time barred. No explanation for delay has also been submitted. The reply was given on 7.6.2014 to the belated application by the Accounts Officer, which the applicant has himself admitted in the O.A.

3.3 The applicant is governed by CCS (Pension) Rules, 1972 and according to the rules then in force, the records of such cases are not preserved beyond 5 years and therefore present case deserves to be dismissed on this ground also.

3.4 The voluntary retirement scheme with minimum qualifying service of 20 years was introduced by the Government in the year 1977 and the applicant resigned in the year 1981. The said scheme was not in existence at that time. Even if the said scheme had been in force, the applicant still would not have been entitled for pension as per Pension Rules. Since resignation is not voluntary retirement and applicant is entitled for pension as per Rule 48 of CCS (Pension) Rules, 1972 only after 20 years of qualifying service, which the applicant does not have, having resigned in 1981. Further, as per Rule 26 (1) of CCS (Pension) Rules resignation involves forfeiture of service.

3.5 There are no rulings of the Court where pensionary benefits are to be given to the employees, who resigned from government service. Such benefits are available to those who retire voluntarily under Rule 48 (A) and for those who retire on superannuation. Rule 49(2) of the CCS (Pension) Rules, 1972 is applicable to retiring employees and not to those who resigned.

3.6 The case law in **Sankaran (supra)** quoted by the applicant is not applicable as the applicant has

resigned from DOT. His matter pertains to CCS (Pension) Rules, 1972 and not Rule 12 A framed for Tamil Nadu (Pension) Rules, 1978.

3.7 The respondents have relied upon the judgment in **Union of India v. Rakesh Kumar (2001 (2) SLR 261),** wherein the Apex Court held that the respondent who had resigned from the post after serving for 10 or more years but less than 20 years is not entitled to pension/pensionary benefits under the relevant provisions of Border Security Force Act, 1968 or the Central Civil Services (Pension) Rules, 1972. The applicant, thus was not entitled for pension under Rule 26(1) of CCS Pension Rules.

3.8 The respondents have relied upon the judgment in the case of **Union of India v. Braij N. Singh (2005 (6) SLR 419),** wherein it was held that the object of interpreting a statute is an edict of legislature. The language employed in a statute is the determinative factor of legislative intent. In view of the above, resignation is not a voluntary retirement and the applicant is entitled for pensionary benefit, as per rules, only after 20 years of qualifying service. Since applicant was not possessing 20 years of qualifying service at the

relevant time in the year 1981 the order was fully within the purview of statutory rules.

4. The applicant has filed a delay condonation petition, wherein he has stated that he represented for reinstatement on 6.3.1987 after his resignation was accepted w.e.f. 21.3.1981 vide letter dt. 21.11.1981. When the applicant came to know that he is entitled for pensionary benefits as decided by the Courts in various cases relating to resignation, he represented to the respondents on 30.3.2000, but no response was given. He approached again on 15.10.2013 and 7.2.2014. When the applicant came to know that the respondents will not settle the issue of pension and irrelevant reasons were given for non-settlement, this O.A. was filed on 5.5.2015, which is within the period of limitation. This case being for grant of pensionary benefits the cause of action is continuous and Section 21 of the Administrative Tribunals Act, 1985 is not attracted.

4.1 The applicant has a very good case on merits and would suffer irreparable loss if the applicant is not heard on merit on account of alleged delay. The applicant has relied upon the judgment in the case of **A.Sagayanathan and others v. Divisional**

Personnel Officer (AIR 1991 SC 424), despite delay, the matter is required to be heard since the juniors of the applicant had been promoted. Hence, delay was unintentional, it was due to administrative reason and beyond the control of the applicant and therefore the delay requires to be condoned.

5. In the reply to the delay condonation petition filed the respondents relied upon the following judgements :-

(i) P.S.Sadasivaswamy v. State of Tamil Nadu {AIR 1974 SC 2271};

(ii) Jacob Abraham and Ors. A.T. Full Bench Judgments, 1994-96;

(iii) Ram Chandra Samanta v. Union of India {1994 (26) ATC 228};

(iv) S.S.Rathore v. State of M.P. {1989 (2) ATC 521};

(v) Bhoop Singh v. Union of India {IR 1992 SC 1414};

(vi) Secretary to Govt. of India v. Shivaram M.Gaikwad {(1995) 30 ATC 68};

(vii) Ex. Capt. Harish Uppal v. UOI {1994(2) SLJ 177};

(viii) L.Chandra Kumar v. Union of India {1997 (2) SLR (SC) 1.

(ix) Dattaram v. Union of India {AIR 199 SC 564}.

(x) Union of India v. Bhagnoar Singh {(1996) LLJ 1127 SC).

(xi) Ramesh Chand Sharma v. Udham Singh Kamal & Ors. {(1998) 8 SCC 304}.

5.1 Further, reliance has been placed upon the Hon'ble Supreme Court decision in **State of Karnataka and Ors. v. S.M.Kotrayya and Ors. {(1996) 6 SCC 267},** wherein it was held that the explanation offered was that they came to know of the relief granted by the Tribunal in August, 1989 and that they filed petition immediately thereafter. That is not a proper explanation at all. What was required of them was to explain under sub-section (1) and (2) of section 20 of the A.T. Act, 1985 was as to why they could not avail of the remedy of redressal of their grievances before the expiry of the period prescribed under sub-section (1) or (2). Therefore, the Court held that the Tribunal was wholly unjustified in condoning the delay. In the delay condonation petition in the O.A., the applicant has failed to count the number of days delay and left it to the Tribunal to count it and condone it in the interest of the applicant. Such course of action is not permissible in law.

6. In the rejoinder to the written statement, the applicant has reiterated the contentions in the O.A., while disputing and denying the contentions

of the respondents in reply to the O.A. It is disputed that this Tribunal has no jurisdiction to try and entertain a matter of 1.11.1982 because the case pertains to grant of pensionary benefits. The cause of action is continuous as has been held by the Hon'ble Supreme Court in the case of **Union of India and Anr. v. Tarsem Singh** in **Civil Appeal No.5151-5152 of 2008** decided on 13.8.2008. Hence, the circumstances in the case of **V.K.Mehra (supra)** may be different.

6.1 Further, it is stated that in **W.P. No.4597/2000** Hon'ble High Court of Bombay after taking into consideration the issue raised by the respondents about jurisdiction, allowed pensionary benefit even though the applicant had submitted his resignation in 1976 and O.A. was filed in 1998. Hence, there is no bar to the Tribunal entertaining the present O.A. as pensionary benefits is a matter of continuous cause of action.

6.2 The applicant has also disputed the contention of the respondents that the judgment of the Hon'ble Supreme Court in **Union of India v. Rakesh Kumar (supra)** governed by the Border Security Force Act/Rules is applicable along with the CCS

(Pension) Rules, whereas in the present case the provisions of CCS (Pension) Rules 1972 only is applicable.

6.3 The Principal Bench, New Delhi in the case of **Sh. Amar Singh v. G.N.C.T., Delhi (O.A. No.1619/2012)** decided on 10.4.2013 allowed the OA in a similarly situated case, after taking into account all the issues regarding pensionary benefits in the case of resignation. The Tribunal held that pension is not a bounty and a liberal view is required. Hence, the claim for pensionary benefit is justified.

6.4 The contention of the respondents that the applicant is not entitled to pensionary benefits since he did not complete 20 years of qualifying service is not tenable as per the judgment in **J.K.Cotton Spinning and Weaving Mills Company Ltd. (supra)**, where the resignation has been treated as voluntary retirement. In any case, the respondent's contention about completion of more than 20 years of service does not arise since pensionary benefits are applicable after completion of 10 years of service.

7. I have gone through the O.A. alongwith Annexures A-1 to A-9 and rejoinder filed by the

applicant.

8. I have also gone through the Reply alongwith Annexure R-1 and also gone through the original records produced by the respondents as per the direction of this Tribunal.

9. I have heard the learned counsel for the applicant and the learned counsel for the respondents and carefully considered the facts, circumstances, law points and rival contentions in the case.

Findings

10. I frame the issues for consideration in this O.A., which are as follows :-

(a) Whether this Tribunal has jurisdiction to entertain the present O.A?

(b) Whether the O.A. is maintainable in view of delay and laches?

(c) Whether the applicant who has resigned from the post after serving for over 10 years, but less than 20 years is entitled to pension and pensionary benefits under CCS (Pension) Rules, 1972?

(d) Whether the interpretation by the Hon'ble Supreme Court in **J.K.Cotton Spinning & Weaving Mills (supra)** that when resignation of member is accepted, it would also mean that the member has voluntarily retired from service is applicable in the

present case, where applicant is governed by the CCS (Pension) Rules, 1972?

11. The facts being undisputed, we directly move to law points. As regards the issue of jurisdiction learned counsel for respondents has relied upon the decision of the CAT, Principal Bench in **O.A. No.153/1986 (supra)** decided on 12.3.1986, wherein the Tribunal held as follows :-

> " The Act does not vest any power or authority in the Tribunal to take cognizance of a grievance arising out of an order made prior to 1.11.1982. In such a case there is no question of condoning the delay in filing the petition but it is a question of the Tribunal having jurisdiction to entertain a petition in respect of grievance arising prior to 1.11.1982. The limited power that is vested to condone the delay in filing the application within the period prescribed is under section 2 provided the grievance is in respect of an order made within 3 years of the constitution of the Tribunal. The Tribunal has no jurisdiction under sub-section (2) of section 21 to entertain an application in respect of `any order' made between 1.11.1982 and 1.11.1985.
>
> Where, therefore, the application relates to a grievance arising out of an order dated 22.5.1981, a date more than 3 years immediately preceding the constitution of the Tribunal, the Tribunal shall have no jurisdiction, power or authority to entertain the same, though it is filed within six months of its constitution as contemplated by sub-section (3) of section 21 of the Act".

12. In this connection, it is the contention of the learned counsel for the applicant that in Writ

Petition **No.4597/2000** (supra), the Hon'ble High Court of Bombay after taking into consideration the issues regarding jurisdiction allowed the writ petition even though writ petitioner was appointed in 1949 and submitted his resignation in 1976, which was accepted in 1976 and the O.A. was filed in 1998.The applicant approached the Commandant in 1977 for grant of pension. There was no reply also to his representations or subsequent representations of 1980 and 1982. In 1984, the prayer for grant of pensionary benefits was rejected by the department. Thus, the said applicant approached the Tribunal vide **O.A. No.600/1998 in 1998.**

13. The Hon'ble High Court of Bombay allowed the writ petition on the ground that the petitioner resigned after completing 20 years of qualifying service, as Rule 48-A of the Pension Rules, 1972 provides that a government servant who has completed 20 years of qualifying service may after giving due notice in writing can retire from service. Hence, had he applied for voluntary retirement he could have got the said retirement on the basis of facts on record. Hence, the court decided relying on **M/s.J.K.Cotton Spinning & Weaving Mills (supra)** that

the letter of resignation should be treated as voluntary retirement. The writ petition was adjudicated on merits in favour of writ petitioner, but not on the issue of delay. However, since the writ petition was allowed, it is deemed that the Hon'ble High Court condoned the delay, even though the delay was not considered or ignored. It is a case of deemed condonation. The said order attained finality.

14. In the present O.A. there was no grievance till 1985 when the A.T. Act, 1985 came into force. The first representation was made on 6.3.1987 for re-appointment, but the second representation of 30.3.2000 was for seeking pensionary benefit, which is the subject matter of this O.A. The first representation was abandoned and replaced by the second representation on the ground that the Hon'ble High Court of Mumbai had given relief to the petitioner in the case of **Mrs.Shaila D.Varekar (supra) in 1998** and it was applicant's genuine belief that the employer employee relationship continued after his resignation, as regards pension. Hence, a grievance arose to the applicant when the order was passed in the Writ Petition on 18.12.1998.

In the light of the decision in **O.A. No.153/1986 (supra)** relied upon by the respondents, in the present OA no grievance existed when resignation was sought/accepted in 1981. No grievance with regard to pensionary benefits, as per Pension Rules,existed till the court order in 1998, according to applicant. Hence, a cause of action is claimed to have arisen, thereafter, in 2000. The respondents have contended that the instant case primarily a case of resignation but admit that Pension is consequential in nature. Hence, before going into the issues of delay, or considering whether the order in the Writ petition covered the case of applicant or not on merits, which we shall hereafter decide, we conclude that this Tribunal has jurisdiction to entertain the O.A.

15. As regards the issue of delay, it is evident from the records that following acceptance of his resignation w.e.f. 21.11.1981, the applicant made a representation on 6.3.1987 seeking reinstatement on the ground that his domestic problems have been resolved. The so called representation of 1987 had nothing to do with the matter in the present O.A. and shall have to be ignored as a first

representation, while dealing with issue of delay and limitation. It was a feeble attempt to somehow come back into government. Since this was not legally feasible, after 13 long years he abandoned the said track and converted/adopted another route staking claim for pension vide representation dt. 30.3.2000,which is the subject matter in this O.A. He waited for 18 to 19 long years after resignation and filed his representation dated 30.3.2000 on getting knowledge of the judgment of the Hon'ble High Court in **Mrs.Shaila D.Varekar (supra)**, in which he saw the next best opportunity and option, after 1987, to get something out of government, although the said judgment, in our view, had nothing to do with resignation or CCS Pension Rules, 1972. After another 13 years, he filed the next representation on 15.10.2013 relying upon the judgment of the Hon'ble Supreme Court in **D.S.Nakara. (supra).** Claiming that resignation amounts to voluntary retirement, he relied on the said judgment in support of his case, which he considered was his right and not a bounty. He again filed a representation dt. 17.2.2014 seeking information as to the status of his representation dated 15.10.2013

for grant of pensionary benefits. Since we have held that this Tribunal can entertain the O.A. as per the jurisdiction enjoined upon this Tribunal under the A.T. Act, 1985, no cause of action or grievance arose as resignation was found mutually acceptable and the employer- employee relationship ceased to exist. Hence, no cause of action or grievance can also be deemed to have arisen after the filing of/acceptance of the resignation. Hence, it was incumbent upon the applicant to have explained and justified the delay of the last 19 years before filing the representation of 2000 regarding claim for pensionary benefits. Even in the first representation filed by the applicant, he sought reinstatement i.e. cancellation and nullifying the order of acceptance of his resignation and not for grant of pensionary benefits. When the representation were filed for grant of pensionary benefits long after in 2000 and then the second representation was filed only in 2013 and the third representation filed 14 years after the first representation and one year after the second representation, the applicant was playing a wait and watch game and taking chances to grab at

some conceivable opportunity to put forward his claim for grant of pension.

16. In the present case, the proximate cause of action according to applicant is that on coming to know about the judgment in **Mrs.Shaila D.Varekar (supra)** decided on 18.11.1988 he was motivated to file his representation in 2000. After cooling off for another 13 years, he pursued his representation of 2000, following another judgment in **D.S.Nakara (supra)** and then filed a representation in 2013. So, it is clear that applicant was waiting, like an opportunist, for occasions when judgments, considerd favourable, are delivered to stake his claim and the rest of the time he remained silent i.e.between 1981 to 2000 on pensionary benefits and then between 2000-2013, all in a long period of 34 years since his resignation. Applicant's silence was more audible than his representations, as it were.

17. The respondents have rightly relied upon the judgment of the Hon'ble Supreme Court in the case of **State of Karnataka and Ors. v. S.M.Kotrayya and Ors. (supra).** Allowing the appeal, the Court has held at para 9 as follows :-

"9. Thus considered, we hold that it is

> not necessary that the respondents should give an explanation for the delay which occasioned for the period mentioned in sub-sections (1) or (2) of Section 21, but they should give explanation for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should be required to satisfy itself whether the explanation offered was proper explanation. In this case, the explanation offered was that they came to know of the relief granted by the Tribunal in August 1989 and that they filed the petition immediately thereafter. That is not a proper explanation at all. What was required of them to explain under sub-sections (1) and (2) was as to why they could not avail of the remedy of redressal of their grievance before the expiry of the period prescribed under sub-section (1) or (2). That was not the explanation given. Therefore, the Tribunal is wholly unjustified in condoning the delay".

18. The applicant has contended that since pension is a matter of continuous cause of action the question of delay and limitation does not arise. In this connection,the respondents have contended that the instant case primarily a case of resignation. Pension is only consequential in nature.

19. In this connection, the respondents have relied upon the judgment in **. Tarsem Singh (supra).** The court held at para 4 of the judgment as follows :-

> "4. The principles underlying continuing wrongs and recurring/ successive wrongs have

> been applied to service law disputes. A `continuing wrong' refers to a single wrongful act which causes a continuing injury. `Recurring/successive wrongs' are those which occur periodically, each wrong giving rise to a distinct and separate cause of action. This Court in Balakrishna S.P. Waghmare vs. Shree Dhyaneshwar Maharaj Sansthan - [AIR 1959 SC 798], explained the concept of continuing wrong (in the context of section 23 of Limitation Act, 1908 corresponding to section 22 of Limitation Act, 1963) :
>
> "It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection, it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury."

20. The applicant has not shown what wrongful act of respondents containing continuing wrong was done to the applicant to give rise to a grievance or cause of action. The applicant resigned on his own accord in 1981 and which was accepted according to his wish. There was no cause of action. He still staked his claim for pension in 2000, then in 2013 and then in 2014 each time based on one or other court order, showing a likely or potential

adjudicable grievance. The question of continuing wrong does not arise. This O.A. is only an attempt to resurrect an irretrievably dead issue. Hence, the applicant's contention that the matter pertains to continuous cause of action is fit to be rejected.

21. Applicant, on the other hand, has relied upon the judgment of the Hon'ble Supreme Court in **Sagayanathan (supra)**, wherein the court held that where juniors were promoted by the respondents in preference to the appellants there was a genuine grievance since appellants had been superceded by their juniors and therefore the court held that the Tribunal should investigate the matter despite the delay. Relying on this judgment, applicant admits to unintentional delay contending that it was on account of inaction by respondents. In other words, he would have this Tribunal to believe, amenable only to presumption that the cause of action arose by inaction of respondents to his representations from 2000 to 2014. This argument is not tenable in the light of section 21 of the AT Act. It has been rightly pointed out by the respondents that the applicant has nowhere even stated as to when cause of action arose and what is the duration of delay

alongwith justification for delay. This is legally necessary. Further, unlike the case in **Sagayanathan** (supra), no case of rights violation of applicant qua others has been made out. The applicant himself was responsible for resigning and then filed belated representations for grant of pension. The said judgment can in no way be considered to be applicable to the present O.A.

22. The other judgments relied upon by the respondents at para 5 of the order in this O.A. are also individually and collectively relevant for rejecting the delay condonation petition of the applicant in the present O.A.

23. As regards merits of the case, the applicant has relied upon the decision of the CAT, Principal Bench in **Amar Singh v. G.N.C.T., Delhi (O.A. No.1619/2012 decided on 10.4.2013),** wherein the O.A. was allowed. The facts of the said O.A. were that the applicant resigned after 18 years 4 months and 9 days of service. He made a claim for pension and service gratuity. It was not acceded to on the ground that the service rendered by the applicant was less than 20 years of qualifying service as per Rule 26 of the Pension Rules, 1972. Since the

applicant had resigned from the post he was considered not entitled to any retiral benefit i.e. gratuity and pension. In the course of writing this judgment it has since come to the Tribunal's notice that the said decision of the CAT, Principal Bench in **O.A. No.1619/2012** was challenged before the Hon'ble High Court of Delhi in **Government of NCT & Ors. v. Amar Singh in Writ Petition No.5428/2013** delivered on 7.11.2013. Allowing the appeal, the Hon'ble High Court held as follows :-

> "11. We have considered the rival submissions made on behalf of the parties. Before we deal with the issue which falls for our consideration we note that the respondent was appointed to a pensionable service governed by the Pension Rules, 1972. Some of the Rules as noted by the Tribunal are Rule 24, Rule 26 and Rule 49 of Pension Rules, 1972. The same are reproduced as under:-
>
> > *"24. Forfeiture of service on dismissal or removal Dismissal or removal of a Government servant from a service or post entails forfeiture of his past service....*
> >
> > *25. ....*
> >
> > *26. Forfeiture of service on resignation (1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the Appointing Authority, entails forfeiture of past service.*
> >
> > *(2) A resignation shall not entail*

forfeiture of past service if it has been submitted to take up, with proper permission, another appointment....

(3) ....

(4) The Appointing Authority may permit a person to withdraw his resignation in the public interest on the following conditions, namely:-

(i) that the resignation was tendered by the Government servant for some compelling reasons which did not involve any reflection on his integrity, efficiency or conduct and the request for withdrawal of the resignation has been made as a result of a material change in the circumstances which originally compelled him to tender the resignation;

(ii) that during the period intervening between the date on which the resignation became effective and the date from which the request for withdrawal was made, the conduct of the person concerned was in no way improper;

(iii) that the period of absence from duty between the date on which the resignation became effective and the date on which the person is allowed to resume duty as a result of permission to withdraw the resignation is not more than ninety days;

(iv) that the post, which was vacated by the Government servant on the acceptance of his resignation or any other comparable post, is available.

(5) Request for withdrawal of a

resignation shall not be accepted by the Appointing Authority where a Government servant resigns his service or post with a view to taking up an appointment in or under a private commercial company or in or under a corporation or company wholly or substantially owned or controlled by the Government or in or under a body controlled or financed by the Government.

(6) When an order is passed by the Appointing Authority allowing a person to withdraw his resignation and to resume duty, the order shall be deemed to include the condonation of interruption in service but the period of interruption shall not count as qualifying service.

(7) A resignation submitted for the purpose of Rule 37 shall not entail forfeiture of past service under the Government.

49. Amount of Pension (1) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month's emoluments for every completed six monthly period of qualifying service.

(2) (a) In the case of a Government servant retiring in accordance with the provisions of these rules after completing qualifying service of not less than thirty-three years, the amount of pension shall be calculated at fifty per cent of average emoluments, subject to a maximum of four thousand and five hundred rupees per mensem;

(b) in the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of thirty three years, but after completing qualifying service of ten years, the amount of pension shall be proportionate to the amount of pension admissible under Clause (a) and in no case the amount of pension shall be less than Rupee three hundred and seventy-five per mensem;

(c) ....

(3) ...."

Other Rule which would have a bearing in so far as this case is concerned is Rule 48A which relates to "retirement" on completion of 20 years of qualifying service. The same is reproduced as under:-

"48-A. <u>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.</u>

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

(i) ....

(ii) ....

(iii) ... ...

(2) …….…..

(3) Deleted.

(3-A)(a) …..

(b)……..

4)…….

(5) The pension and retirement gratuity of the Government servant retiring under this rule shall be based on the emoluments as defined under Rules 33 and 34 and the increase not exceeding five years in his qualifying service shall not entitle him to any notional fixation of pay for purposes of calculating pension and gratuity.

(6) ...."

12. The Pension Rules, 1972 clearly brings out difference between the ”resignation“ and the "retirement". Rule 26(1) stipulates forfeiture of service on resignation. Exceptions have been carved out under Rule 26(2) and Rule 26(3). Here the respondent tendered his resignation by giving a three months notice and the same is accepted. In view of clear distinction between ”resignation“ and ”retirement“ and the effect thereof under the Rules the consequence as laid down under Rule 26(1) be adhered to.

13. We may note here the opinion of the Supreme Court in Sanwar Mal's case (supra) which reads as under:-

> *"9. We find merit in these appeals. The words "resignation" and "retirement" carry different meanings in common parlance. An employee can resign at any point of time, even on the second day of his appointment but in the case of retirement he retires only after attaining the age of superannuation or in the case of voluntary retirement on completion of qualifying service. The effect of resignation and retirement to the extent that there is severance of employment (sic is the same) but in service jurisprudence both the expressions are understood differently. Under the Regulations,*

the expressions "resignation" and "retirement" have been employed for different purpose and carry different meanings. The pension scheme herein is based on actuarial calculation; it is a self-financing scheme, which does not depend upon budgetary support and consequently it constitutes a complete code by itself. The Scheme essentially covers retirees as the credit balance to their provident fund account is larger as compared to employees who resigned from service. Moreover, resignation brings about complete cessation of master-and-servant relationship whereas voluntary retirement maintains the relationship for the purposes of grant of retiral benefits, in view of the past service. Similarly, acceptance of resignation is dependent upon discretion of the employer whereas retirement is completion of service in terms of regulations/rules framed by the Bank. Resignation can be tendered irrespective of the length of service whereas in the case of voluntary retirement, the employee has to complete qualifying service for retiral benefits. Further, there are different yardsticks and criteria for submitting resignation vis-a-vis voluntary retirement and acceptance thereof. Since the Pension Regulations disqualify an employee, who has resigned, from claiming pension the respondent cannot claim membership of the fund. In our view, Regulation 22 provides for disqualification of employees who have resigned from service and for those who have been dismissed or removed from service. Hence, we do not find any merit in the arguments advanced on behalf of the respondent that Regulation 22 makes an

arbitrary and unreasonable classification repugnant to Article 14 of the Constitution by keeping out such class of employees. The view we have taken is supported by the judgment of this Court in the case of Reserve Bank of India and Anr. v. Cecil Dennis Solomon, (2004)9 SCC 461. Before concluding we may state that Regulation 22 is not in the nature of penalty as alleged. It only disentitles an employee who has resigned from service from becoming a member of the Fund. Such employees have received their retiral benefits earlier. The pension scheme, as stated above, only provides for a second retiral benefit. Hence there is no question of penalty being imposed on such employees as alleged. The Pension Scheme only provides for an avenue for investment to retirees. They are provided avenue to put in their savings and as a term or condition which is more in the nature of an eligibility criterion, the Scheme disentitles such category of employees as are out of it."

14. Further in so far as the submission of Mr.M.L.Sharma, learned counsel for the respondent that the "resignation" must be treated as "retirement" is concerned the same cannot be accepted for the reasons stated as under. A perusal of Rule 48A of Pension Rules, 1972 stipulates that the Government servant can seek "retirement" only on completion of 20 years of qualifying service. There is no Rule which stipulate a Government servant can seek "retirement" after completion of 10 years service. If a Government servant cannot seek "retirement" before 20 years then the only way he can leave employment is by giving resignation which the respondent did when he gave his application/notice for resignation.

15. The Pension Rules, 1972 recognizes different types of pensions like superannuation pension (Rule 35) retiring Pension (Rule 36), Pension on Absorption (Rule 37), Invalid Pension (Rule 38), Compensation Pension (Rule 39), Compulsory Retirement Pension (Rule 40) and Compassionate Pension (Rule 41).

16. The case in hand is not a claim for Superannuation Pension, Compassionate Pension, Pension on Absorption, Invalid Pension, Compulsory Retirement Pension, Compensation Pension or Compassionate Pension. Even the claim is not sustainable for"retiring pension" as he is not eligible, as the grant of the same presupposes a Government servant retiring under the Rules. The respondent having 18 years, 4 months and 9 days of service could not have sought retirement. Rule 36 of the Pension Rules, 1972 stipulates "retiring pension" would be given to a Government servant retiring under Rule 48 or Rule 48A or Rule 56 of the Pension Rules, 1972.

17. Even a perusal of Rule 49 of the Pension Rules, 1972 would reveal that the said Rule lay emphasis on the fact that the amount of pension would be calculated in the case of Government servant retiring in accordance with the provisions of the Pension Rules. As we have held above, since the respondent could not have retired before 20 years of qualifying service, Rule 49 would be inapplicable in his case. A conjoint reading of Rule 48A and Rule 49 of Pension Rules, 1972 would reveal that a Government servant is eligible for payment of pro rata pension after putting 10 years of qualifying service only in the case of "retirement" on attaining the normal age of superannuation. We may note that this Court had decided the issue whether a Government servant would be entitled to pension if he had put in less than 20 years of service in the case titled as Dayawati v. Union of India & Ors. in LPA No.75/2002 decided on February 29, 2008. The relevant portion is extracted hereunder:-

"3. On going through the records we also find that the Supreme Court in the aforesaid case of Rakesh Kumar (supra) has held that on the basis of Rule 49 of the CCS (Pension) Rules, 1972, a member of the BSF, who has resigned from his post after completing more than 10 years of qualifying service but less than 20 years would not be eligible to get pensionary benefit. The husband of the appellant had about 13 years of WP(C) No.5428/2013 Page 15 of 20 service to his credit. A similar case of a Commandant of Indian Coast Guard having 13 years of service to his credit was subject matter of a writ petition being WP(C) No.5651/2000 titled Comdt. Rajeev Ranjan (Retd.) v. Union of India and others (disposed of on 12th October, 2004), before one of the Division Benches of this Court consisting of Dr.Mukundakam Sharma and Gita Mittal, JJ. By judgment dated 12th October, 2004, the said writ petition filed by the Coast Guard employee was dismissed relying on the aforesaid decision of the Supreme Court.

4. The appellant herein is the widow of the deceased Shri Ram Avtar Singh, who had only 13 years of service to his credit. Her husband was not entitled to pensionary benefit on completion of 13 years of service. Resignation of the husband of the appellant was accepted by the respondent. BSF effective from 1st September, 1996 by which date he did not complete 20 years of service. However, under a misconception of law, the respondent BSF gave pension to the husband of the appellant and after his death to his wife, who is the present appellant. In view of the aforesaid law now laid down by

the Supreme court, they have stopped making payment of further pension, but it is categorically stated before us by the counsel for the respondents that whatever amount has since been paid to the widow or to her husband by way of pension under misconception of law, would not be recovered by the respondents. Therefore, in our considered opinion, this appeal has no merit and is dismissed."

18. The reliance placed by the Tribunal on Sheelkumar Jain's case (supra) is also misplaced. In Sheelkumar Jain's case (supra) the Supreme Court was concerned with the Insurance Scheme and not the Pension Rules as are applicable to the Government employees. The provisions of the scheme and the Rules are not para materia. In Sheelkumar Jain's case (supra) the Supreme Court had held that the scheme does not make a distinction between "resignation" and "voluntary retirement". It only provides that an employee who wants to leave or discontinue his service amount to "resignation" or "voluntary retirement" that is not the position under the Pension Rules, 1972. As stated above the Rules make a clear distinction between the "resignation" and the "retirement". In fact the Rules also stipulate the consequences of "resignation" and "retirement".

19. In fact in the case of Sheelkumar Jain's case (supra) the employee had tendered his "resignation" in the year 1991 when there were no Rules bringing our distinction between "resignation" and "voluntary retirement" and the effect thereof.

20. In a latest opinion reported as 2012 9 SCC 671 M.R.Prabhakar v. Canara Bank & Ors. the Supreme Court while referring to Sheelkumar Jain's case (supra) brought out distinction between "resignation" and "resignation" which is reproduced as under:-

"19. We may point out in Sheelkumar

Jain this Court was dealing with an insurance scheme and not the pension scheme, which is applicable in the banking sector. The provisions of both the scheme and the Regulations are not pari materia. In Sheelkumar Jain case, while referring to Para 5, this Court came to the conclusion that the same does not make distinction between "resignation" and "voluntary retirement" and it only provides that an employee who wants to leave or discontinue his service amounts to "resignation" or "voluntary retirement". Whereas, Regulation 20(2) of the Canara Bank (Officers') Service Regulations, 1979 applicable to banks, had specifically referred to the words "resignation", unlike Para 5 of the Insurance Rules. Further, it is also to be noted that, in that judgment, this Court in Para 30 held that the Court will have to construe the statutory provisions in each case to find out whether the termination of service of an employee was a termination by way of resignation or a termination by way of voluntary retirement."

21. The distinction between the Pension Rules, 1972 and the scheme with which the Supreme Court was concerned with in the Sheelkumar Jain's case (supra) has been overlooked by the Tribunal.

22. The reference to the judgment in the case reported as (2001) 6 SCC 591 Gorakhpur University & Ors. v. Dr. Shitla Prasad Nagendra& Ors., (1999) 6 SCC 459 Madan Singh Shekhavat v. Union of India & Ors. and (1983) 1 SCC 305 D.S.Nakara v. Union of India would have no relevancy in the facts of this case. The case has to be seen in terms of the Pension Rules, 1972 as applicable to the petitioners" organization.

23. The conclusion of the Tribunal that Rule

26(1) of the Pension Rules, 1972 requires liberal interpretation would also be untenable. Rule 26(1) of the Pension Rules, 1972 would have to be given its effect.

24. In this regard it shall be trite to refer to the judgment reported as (2010) 5 SCC 196 Pallavi Resources Limited v. Protos Engineering Company Private Limited wherein the Supreme Court with regard to interpretation of a provision in a Statute has held as under:-

> *"17. A cardinal principle of statutory interpretation is that a provision in a statute must be read as a whole and not in isolation ignoring WP(C) No.5428/2013 Page 18 of 20 the other provisions of that statute. While dealing with a statutory instrument, one cannot be allowed to pick and choose. It will be grossly unjust if the Court allows a person to single out and avail the benefit of a provision from a chain of provisions which is favourable to him. Reference may be made to a constitutional bench decision of this Court in the case of Prakash Kumar v. State of Gujarat (2005) 2 SCC 409. The Court in para 30 of that judgment observed as follows:*
>
> *"30. By now it is well settled principle of law that no part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is also trite that the statute or rules made thereunder should be read as a whole and one provision should be construed with reference to the other provision to make the provision consistent with the object sought to be achieved."*
>
> *18. We wish to also refer to a*

latest judgment of this Court reported as SAIL v. S.U.T.N.I. Sangam and Ors. 2009 (10) SCALE 416 wherein this Court, very succinctly reiterated the aforesaid position in para 67 as follows:

"67. The learned Counsel, however, invited our attention to take recourse to the purposive interpretation doctrine in preference to the literal interpretation. It is a well settled principle of law that a statute must be read as a whole and then chapter by chapter, section by section, and then word by word. For the said purpose, the Scheme of the Act must be noticed. If the principle of interpretation of statutes resorted to by the Court leads to a fair reading of the provision, the same would fulfill the conditions of applying the principles of purposive construction.

19. From these authorities, it is amply clear that a provision in a statute ought not to be read in isolation. On the contrary, a statute must be read as an integral whole keeping in view the other provisions which may be relevant to the provision in question in order to correctly arrive at the legislative intent behind the provision in question. Applying this principle to the case at hand which involves an interpretation of Section 17(4A), it will not be appropriate for us to read Sub-section 4A of Section 17 ignoring the other relevant provisions."

25. The respondent having resigned from service would forfeit his past service which was not a qualifying service for pension under the Pension Rules, 1972.

> 26. In view of our aforesaid discussion we allow the writ petition and set aside the impugned order dated April 10, 2013 of the Tribunal and consequently the Original Application filed by the respondent is dismissed".

24. The learned counsel for the applicant in the present O.A. did not bring to the notice of the Tribunal about the factum of the said writ petition having been allowed.

25. However, in the judgment of the Hon'ble Bombay High Court in **Writ Petition No.4597/2000 (supra)**, relied upon by the learned counsel for the applicant, we do not see any detailed discussion as is in evidence before us in **Writ Petition No.5428/2013 (supra)** of the Hon'ble High Court of Delhi in the specific context of Rule 26, 48 and 49 of the CCS Pension Rules,1972. In any case, facts of the case is distinguishable since the writ petitioner in **W.P 4597/2000** (supra) had completed more than 20 years of service between 1949 to 1976 and hence even though he sought resignation in 1976, since he had completed 20 years qualifying service, the Hon'ble High Court held that there would be nothing illegal if resignation in this context is treated as voluntary retirement rendering the writ

petitioner eligible for grant of pension. The order of the Hon'ble High Court of Bombay cannot be interpreted to mean that even if the applicant, governed by the CCS (Pension) Rules, 1972, had resigned by completing less than 20 years of qualifying service, he is eligible for pension. Hence, the judgment in **Writ Petition No.4597/2000 (supra)** is distinguishable.

26. The learned counsel for the respondents has relied upon the judgment of the Hon'ble Supreme Court **Braij Singh (supra)** decided on 19.10.2005. In the said case, the applicant resigned from service after serving from 1959 to 1977. Two decades after his resignation was accepted in 1977, the respondent filed a representation for grant of pension. The same was rejected on the ground that the respondent had resigned and as per Rule 26(1) of the Pension Rules his past service stood forfeited and therefore he was not entitled to any pension. The Tribunal vide order dt. 14.3.2001 held that the forfeiture of past service is not sustainable in law and the delay was condoned since the Tribunal perceived that the respondents case had merits. The appellant filed writ petition before the Hon'ble

High Court of Patna questioning the correctness of the Tribunal's decision. The High Court vide order dt. 17.4.2003 held that retirement benefits is a right of service which inheres and the rules cannot be interpreted to deny post retirement benefits. The appellants contended that Rule 26 (1) clearly postulates forfeiture of past service in case of resignation and once past service is forfeited the qualifying period for receiving pension does not exist. However, the learned counsel for the respondents disputing the contention of the appellant submitted that the entitlement of pension flows from the rules. There are specific provisions under which pensionary benefits can be denied, but Rule 26 cannot be pressed into service to deny the benefits. It was also submitted that Rule 26 (2) only provides an escape route to the forfeiture of past service. Merely because after acceptance of resignation the employee did not take up another appointment under Government that would not take away the right to receive pension flowing from the rules. After appreciating the rival submissions, as recalled above in respect of Rule 26, the Hon'ble Supreme Court allowed the appeal in following

terms :-

"Rule 26 as the heading itself shows relates to forfeiture of service on resignation. In clear terms it provides that resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the Appointing Authority, entails forfeiture of past service. The language is couched in mandatory terms. However, sub-rule (2) is in the nature of an exception. It provides that resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies. Admittedly this is not the case in the present appeal. Rule 5 on which great emphasis was laid down by the learned counsel for the respondent deals with regulation of claims to pension or family pension. Qualifying service is dealt with in Chapter III. The conditions subject to which service qualifies are provided in Rule

14. Chapter V deals with classes of pensions and conditions governing their grant. The effect of Rule 26 sub-rules (1) and (2) cannot be lost sight of while deciding the question of entitlement of pension. The High Court was not justified in its conclusion that the rule was being torn out of context. After the past service is forfeited the same has to be excluded from the period of qualifying service. The language of Rule 26 sub-rules (1) and (2) is very clear and unambiguous. It is trite law that all the provisions of a statute have to be read together and no particular provision should be treated as superfluous. That being the position after the acceptance of resignation, in terms of Rule 26 sub-rule (1) the past service stands forfeited. That being so, it has to be held that for the purpose of deciding question of entitlement to pension the respondent did not have the qualifying period of service. There is no

> substance in the plea of the leaned counsel for the respondent that Rule 26 sub-rules (1) and (2) has limited operation and does not wipe out entitlement to pension as quantified in Rule 49. Said Rule deals with amount of pension and not with entitlement.
>
> 6. ....
>
> 7. ....
>
> 8. ....
>
> 9. In Dr. R. Venkatchalam and Ors. etc. v. Dy. Transport Commissioner and Ors. etc. (AIR 1977 SC 842), it was observed that Courts must avoid the danger of a priori determination of the meaning of a provision based on their own pre-conceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation".

27. The learned counsel for respondents has also relied upon the judgment of the Hon'ble Supreme Court in **Rakesh Kumar (supra)** decided on 30.3.2001. The facts of the case before the Supreme Court was that the applicant served Border Security Force (BSF) as a Constable between 1981-1984. After rendering service of 12 years 8 months, he submitted his resignation which was accepted in 1994 under Rule 19 of the BSF Rules. In 1995 the Ministry of Home Affairs issued a Government Order regarding admissibility of pensionary benefits on acceptance

of resignation under Rule 19 of the BSF Rules. The respondents submitted that Rule 19 is interpreted by the Central Government by issuing Government Order of 1995 clarifying that in case of acceptance of resignation of an employee after lapse of 10 years he is entitled to get pension. It was contended by the respondent that the provisions of the Government Order permits the Competent Authority to only reduce some part of pension under proviso to Rule 19 on the resignation being accepted and hence submitted that the appellants were estopped from contending that respondents are not entitled to pensionary benefits under Government Order.

28. The learned counsel for appellants submitted that the impugned order passed by the High Court was erroneous arising from mis-interpretation of Rule 19 of the BSF Rules. Neither the Act, nor the Rules make provision for grant of pension. The proviso to Rule 19 empowers government to impose penalties if it chooses to permit resignation since as per Section 8 of the BSF Act and Rule 19 of the Rules no member of the Force shall be at liberty to resign during the term of his engagement except with the previous permission of the prescribed authority.

Rule 19 held that the Central Government may keeping in view the special circumstances permit an officer to resign before putting in such number of years of service as may be necessary under the Rules to be eligible for retirement. The proviso to Rule 19 requires the officer to refund to the Government amount such amount as would constitute the cost of training or empowered the Competent Authority to make such reduction in pension or other retirement benefits of the officer if so eligible. The learned counsel for the appellants before the Hon'ble Supreme Court, therefore, submitted that in case of resignation of a member of the Force is accepted, it would not mean that he has retired from service and that resignation would mean voluntary act of quitting the job or service and implies that the employee, though fit in all respects, decides to quit and leave the service. As against this, retirement implies tenure although it may not be a full tenure having completed in the job and thereafter employee leaves the service. Retirement can be at the age of superannuation, compulsory retirement or retirement on exigencies like becoming invalid etc. The learned counsel for appellants

therefore submitted that resignation of an employee would not mean that he has retired at the age of superannuation or there is premature retirement which may be compulsory or because of other exigencies and, therefore, there is no question of grant of any pension to the employee under the CCS (Pension) Rules. In the said appeal before the Hon'ble Supreme Court the counsels for both the parties admitted that while resignation is governed by the BSF Rules, the grant of pension to the member of the Force was subject to and governed by the CCS (Pension) Rules, 1972. This requires to be mentioned as the learned counsel for the applicant in the present O.A. contends that the judgment in **Rakesh Kumar (supra)** pertains to a member of B.S.F. governed by the GO, as well as CCS Pension Rules , 1972, whereas the present applicant is covered by only the CCS Pension Rules, 1972 and hence the judgment in **Rakesh Kumar** (supra)does not cover the applicant’s case. Be that as it may. This issue got clarified in the order of the Court, as shall be seen.

29. The Hon'ble Supreme Court after appreciating the rival contentions, allowed the appeal and held

as follows at following relevant paragraphs :-

> 12. Bare reading of Section 8 of the Act makes it clear that no member of the BSF will have right to resign except with prior permission in writing of the prescribed authority. The language is prohibitory and the member of the BSF is not having liberty to resign from his appointment during the term of his engagement, however, the prescribed authority may permit the member of the BSF to resign in certain special circumstances. Rule 19 does not create any right to pension. It is intended to enable members of BSF to resign from force without attracting any penal consequences. For that, Rule 19 provides that Central Government having regard to the special circumstances of any case may permit any officer of the force to resign before the attainment of the age of retirement or before putting in such number of years of service as may be necessary under the Rules to be eligible for retirement. Discretionary powers are given to the authority to accept or reject the resignation. Proviso to Rule 19(1) empowers the Central Government, while granting permission to resign, to require the officer to refund to the Government such amount as would constitute the cost of training given to that officer. Further, if the officer is eligible to get pension or other retirement benefits, rules empower the Government to make reduction in the pension or other retirement benefits.
>
> 13. The next step is once it is accepted that members of the BSF are governed by the CCS (Pension) Rules, then the question is whether a member is entitled to get pension on his resignation before compulsory age of retirement or 20 years of service or if he retires or is retired at the age of 30/33 years of qualifying service. The scheme of the said Rules provides that normally a government servant

is entitled to get pensionary benefits after he retires at the age of superannuation. There are exceptions for grant of pensionary benefit in cases where government servant voluntarily retires after completing 20 years of qualifying service and also retires after completing 30/33 years of qualifying service, invalid pension or compensate pension or on compassionate grounds etc. Chapter V deals with grant of pensions and the conditions for such grants. As per Rule 35 superannuation pension is to be granted to a government servant who retires on his attaining the age of compulsory retirement. Retiring pension is further given to a government servant who retires or is retired in advance of age of compulsory retirement in accordance with the provisions of Rule 48 after completing 30 years of qualifying service or Rule 48-A of the CCS (Pension) Rules or Rule 56 of the Fundamental Rules or Article 459 of the Civil Service Regulations. Rule 48-A provides for voluntary retirement after completion of 20 years qualifying service after giving three months notice in writing to the appointing authority and if such notice is accepted he would get retiring pension. Thereafter, Rule 49 provides for method of calculation of amount of pension to such government servant. Relevant parts of the CCS (Pension) Rules for grant of pension are as under: - ....

15. On the basis of Rule 49, it has been contended that qualifying service for getting pension would be ten years. In our view, this submission is without any basis. Qualifying service is defined under Rule 3(q) to mean service rendered while on duty or otherwise which shall be taken into account for the purpose of pensions and gratuities admissible under these rules. Rule 13 provides that qualifying service by a government servant

commences from the date from which he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. This rule nowhere provides that qualifying service for getting pension is 10 years. .... It is also to be stated that Rule 26 of CCS (Pension) Rules specifically provides that resignation from a service or post entails forfeiture of past service unless resignation is submitted to take up, with proper permission, another appointment under the government where service qualifies. Hence, on the basis of Rule 49 member of BSF who has resigned from his post after completing more than 10 years of qualifying service but less than 20 years would not be eligible to get pensionary benefit. There is no other provision in the CCS (Pension) Rules giving such benefit to such government servants.

16. ....

17. ....

18. ....

19. ....

20. ....

21. In the result, there is no substance in the contention of the learned counsel for the respondents that on the basis of Rule 49 of the CCS (Pension) Rules or on the basis of G.O., the respondents who have retired after completing qualifying service of 10 years but before completing qualifying service of 20 years by voluntary retirement, are entitled to get pensionary benefits. Respondents who were permitted to resign from service under Rule 19 of the BSF Rules before the attainment of the age of retirement or before putting such number of years of service, as may be necessary under

> the Rules, to be eligible for retirement are not entitled to get any pension under any of the provisions under CCS (Pension) Rules. Rule 49 only prescribes the procedure for calculation and quantification of pension amount.....
> The G.O. dated 27.12.1995 does not confer any additional right of pension on the BSF employees".

The above judgment squarely covers the case of applicant on all fours as in **Braij Singh and Amar Singh (supra)**

30. The applicant has relied upon the judgment of the Hon'ble Supreme Court in **J.K.Cotton Spinning & Weaving Mills Company Ltd. (supra).** The said judgment pertains to a case under the Industrial Disputes Act, 1947, whereas the present case pertains to the provisions of the CCS (Pension) Rules, 1972 which governs the service conditions of applicant while he was in service. The Apex Court relied on the dictionary meaning of the terms resigned and retired to allow the appeal as under to show that no compensation was payable to the respondent by the appellant :-

Name of the Dictionary	Meaning of `Resign'	Meaning of `Retire'
Black's Law Dictionary (5th Edn.)	Formal renouncement or relinquishment of an office	To terminate employment or service upon reaching retirement age.

Shorter Oxford English Dictionary (Revised Edn. Of 1973)	To relinquish, surrender, give up or hand over (something); esp., an office, position, right, claim, etc. To give up an office or position; to retire.	The act of retiring or withdrawing to or from a place or position.
The Random House Dictionary (College Edn.)	To give up an office, position etc.; to relinquish (right, claim, agreement etc.)	To withdraw from office, business or active life.

The Court held that the meaning of term `resigned' includes retirement. Hence, when an employee voluntarily tenders resignation, it is an act by which he voluntarily gives up his job within the meaning of the provisions of the said Act. However, the provisions of the said Act do not match with the specific prohibitory provisions of the CCS (Pension) Rules as already discussed in the context of reproducing the judgments in **Amar Singh**, **Braij Singh and Rakesh Kumar (all supra).** Hence, the Competent Authority is bound by the statutory provisions of Section 26(1) of the CCS (Pension) Rules, 1972 which is distinguished from the provisions of Rule 48 pertaining to pensionable service based on completion of 20 years of qualifying service on seeking voluntary retirement. The distinction

having been made explicit the view taken by the Hon'ble Supreme Court in the case of **J.K.Cotton Spinning & Weaving Mills Company Ltd. (supra)** is not applicable to the present case.. The pension rules distinguish resignation from voluntary retirement, which entail differential consequences in terms of admissibility of pensionary benefits.

31. The learned counsel for the respondents has rightly pointed out that even as regards the provisions of voluntary retirement scheme, which was introduced in the year 1977 and which provides that after minimum qualifying service of 20 years a government employee would be entitled for pension,the scheme came into prospective effect and hence did not cover the case of the applicant who came into service in 1968 and who resigned in 1981.

32. The learned counsel for the applicant has relied upon the order of CAT, Jabalpur Bench in **A.P.Shukla (supra).** The applicant in the said O.A. was appointed in 1953 and tendered his resignation in 1971 after completing 17 years and 9 months of service. During his service the applicant was allowed to opt for pension scheme i.e. either pension or Provident Fund. Applicant was governed

by Rule 311 of the Manual of Railway Pension Rules, 1950. However, no such option is inherent to the present O.A. and hence the facts are distinguishable. The Tribunal allowed the O.A. in the light of Rule 102 of the Railway Pension Rules, 1950 agreeing with the interpretation of equating resignation and voluntary retirement by the Hon'ble Supreme Court in **J.K.Cotton Spinning & Weaving Mills Company Ltd. (supra)** to allow the O.A. However, in view of the prohibitory, clear and unambiguous provisions of Rule 26(1) and the distinguishability of the facts and circumstances in this present O.A., relying upon **Amar Singh and Rakesh Kumar and Braij Singh (all supra)**, the Tribunal holds that the facts, circumstances and law points in **O.A. No.623/1991 (supra)**are completely distinguishable from the present O.A.

33. The applicant has also relied upon the judgment of the Hon'ble High Court of Bombay in **Mrs.Shaila D.Varekar (supra)** decided on 18.12.1998. The facts of the said case shows that applicant was a non-teaching staff of a college who retired on 7.1.1987. On 16.11.1996 Maharashtra Civil Services (Pension) Rules, 1982 were made applicable to

persons working in government recognized and aided Non-Governmental Art Educational Institutes w.e.f. 1.4.1995. The applicant's college was covered by the said circular. However, the applicant's claim for benefits arising out of extension of the pension scheme was denied. The issue pertain to payment under the scheme in view of the superannuation of the persons concerned. The court held that prescription of any cut-off date is wholly irrational and violative of Article 14 of the Constitution of India. On the face of it, the facts and circumstances of the matter in the writ petition has no relevance to the present O.A. Nor did it pertain to claim of pension following resignation. Applicant relied upon this judgment to show that cause of action arose in this OA from this judgment of 1998 to file a belated representation in 2000, which we have held to be not tenable under law to justify delay, inter alia, relying on **Kottrayya and Tarsem Singh** (both supra).

34. The learned counsel for the applicant has relied upon the judgment of the Hon'ble Supreme Court in **Sheelkumar Jain v. The New India Assurance Co. Ltd. & Ors. {(2011) 12 SCC 197}.** In this

connection, the Hon'ble High Court of Delhi in **Government of NCT & Ors. v. Amar Singh (supra)** has already distinguished the judgment from the purview of Pension Rules , which governd the respondent in the said Writ Petition at paras 18, 19 and 21 of the judgment and reproduced at earlier paras of this order, as thesame applies to the applicant in the present O.A. Hence, we do not find any need to further clarify this issue.

35. The learned counsel for the applicant has relied upon the judgment in **Smt.Bimla Devi v. Union of India (O.A. No.730/1991)** decided by the CAT, Principal Bench, New Delhi on 30.1.1992. The Tribunal held that pension is admissible on completion of 10 years of service and the resignation becomes effective from the date of its tendering. However, in **Amar Singh (supra)**, the Hon'ble High Court has set aside the order of the Tribunal when it was challenged before the Hon'ble High Court. The Court allowing the appeal, held that the CCS (Pension) Rules, 1972 expressly prohibits grant of pension in case of resignation, which entails forfeiture of service as per Rule 26(1). As per settled law, this Tribunal is bound

by the orders of the Hon'ble High Court of New Delhi and not by an order of this Tribunal in a matter where the superior court has given a judgment to the contrary.

36. The learned counsel for the applicant has relied upon the judgment in **S.Sankaran (supra).** The case in the said writ petition pertain to Rule 12 (a) of the Tamil Nadu Pension Rules 1978. As per Rule 12 (a) of the said Rules total qualifying service of 10 years or more renders a person eligible to claim pension. The court held that as per the Tamil Nadu Non-Government Teachers Pension Rules, 1958 only in the case of discharge or retirement after serving for 10 years, the persons are eligible for pension. Relying upon the judgment of the Hon'ble Supreme court in the case of **J.K.Cotton Spinning & Weaving Mills Company Ltd. (supra)** equating resignation to retirement, the Hon'ble High Court held that the petitioner satisfies the condition of Rule 12 (a) of the Tamil Nadu Pension Rules, 1978 and hence allowed the Writ Petition. The Pension Rules, 1972 contains provisions completely at variance with the Tamil Nadu Non-Government Pension Rules, 1958 and cannot

cover the case of applicant. The judgment in **J.K.Cotton Spinning & Weaving Mills Company Ltd. (supra)** has already been distinguished from the present case and hence the Tribunal finds that the judgment in **S.Sankaran (supra)** is also not applicable to the facts, circumstances and law points arising in the present O.A.

37. Summing up, the Tribunal is of the view that this Tribunal is not without jurisdiction to entertain the O.A., at this juncture. To this extent the contentions of the respondents are rejected. However, the present O.A. cannot be legally countenanced from the point of view of limitation under A.T. Act, 1985. The delay has remained unexplained and unjustified and hence the O.A. is not maintainable on grounds of delay. As regards the merits of the case, it is clear from the discussions above, given the complete match between the facts of the present case and that of the order of the Court in **Amar Singh**, **Braij N. Singh** and **Rakesh Kumar (all supra)**, the case is found to be overwhelmingly in favour of the contentions of the respondents. The Courts have held that Rule 26 (1) read with Rule 48 and 49 Pension Rules clearly rules

out and prohibits grant of pension in case of resignation even after 10 years service as resignation sets at naught and disqualifies the otherwise qualifying years of service, as contributory periods, only for purposes other than resignation. According to Pension Rules resignation cannot be equated to voluntary retirement as a different provision of the Rules apply to resignation and voluntary retirement. Accordingly, the Tribunal sees no legal or valid reason to interfere in favour of the applicant. Hence, the O.A. is liable to be rejected both on grounds of merit and delay.

38. Accordingly, O.A. is dismissed. No costs.

(MS.B.BHAMATHI)
MEMBER (A)

Amit/B.