

OA.No.170/00732/2018/CAT/Bangalore Bench
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00732/2018

DATED THIS THE 17th DAY OF DECEMBER, 2018

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C.V.SANKAR, MEMBER (A)

C.R.Nagabhushana
 S/o. (Late) C.Rama Rao
 Aged about 57 years
 Retired as Senior Accountant
 Residing at No.5, Ground Floor
 2nd 'A' Main, 3rd Cross
 AMS Extension, Behind Nativity Church
 Vidyaranyapura
 Bangalore-560 097.

....Applicant

(Party-in-person)

Vs.

1. The Union of India
 Rep. by its Comptroller and Auditor General of India
 No.9, Deen Dayal Upadhyaya Marg
 New Delhi-110 124.
 2. The Principal Accountant General (A&E)
 Karnataka Palace Road
 Bangalore-560 001.
 3. The Senior Deputy Accountant General (Admin)
 Principal Accountant General (A&E)
 Karnataka, Palace Road
 Bangalore-560 001.
 4. The Competent Authority
 Rep. by its Senior Accounts Officer/HRD
 O/o The Principal Accountant General (A&E)
 Karnataka, Palace Road
 Bangalore-560 001.
- ...Respondents

(By Advocate Sri M.Vasudeva Rao)

O R D E R

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The applicant has filed the present OA seeking the following relief:

- a) *Call for the relevant records from the respondents and on perusal*
 - b) *Quash and set aside the Letter in No.E&C/A5/2014-15/316 dtd.27/6/2014(Annexure-A5); Letter in No.ESI/A8/2014-15/295 dtd.30.7.2014(Annexure-A7); Letter in No.ESI/A8/23014-15/306 dtd.14.8.2014 (Annexure-A12); Letter in No.ESI/A2/2016-17/238 dtd.16.2.2017(Annexure-A17) and Letter in No.ESI/A1/NB/2017-2018/470 dtd.2.1.2018(Annexure-A19) issued by the respondents, while directing the respondents to consider the case of the applicant for reinstatement into service with all consequential benefits.*
2. According to the applicant, he has joined the service of the respondents as casual labour in 1980 and regularized on 8.4.1983 as Peon-D Group employee and further as Senior Accountant and served the department for more than 30 years. It is the case of the applicant that he submitted application on 3.6.2014(Annexure-A1) seeking voluntary retirement on personal grounds upon completion of 30 years of service as per the CCS (Pension) Rules, 1972. He submitted representation dtd.13.6.2014(Annexure-A2) requesting the respondents to relieve him on VRS on 2.7.2014 and to be on duty on 1.7.2014 to avail the benefit of adding next increment. The applicant submitted another representation dtd.1.7.2014(Annexure-A3) while in service with request to appoint his daughter on compassionate ground. He submitted a representation on 21.7.2014(Annexure-A4) for withdrawal of voluntary retirement. The 3rd respondent issued a letter dtd.27.6.2014(Annexure-A5) accepting his VR notice. The applicant submitted another representation dtd.1.7.2014(Annexure-A6) for invalid pension under Rule 38 of CCS (Pension) Rules 1972 in response to which, 3rd respondent issued a letter dtd.30.7.2014(Annexure-A7) rejecting the same. Further the applicant submitted a certificate dtd.14.7.2014(Annexure-A8) issued by the RMO of the rank of District Civil Surgeon of Victoria Hospital, Bangalore and also certificate(Annexure-A9) to the effect that he is suffering from Chronic Schizophrenia – Bipolar Disorder to the extent of 70% since last 20 years,

OA.No.170/00732/2018/CAT/Bangalore Bench which has been countersigned by Dr.K.M.Dhurvakumar, Psychiatrist at CGHS Dispensary at Vijayanagar. The applicant submitted his appeal dtd.1.8.2014(Annexure-A10) to the 2nd respondent to consider him under Rule 38 of CCS(Pension) Rules, 1972. Further he submitted another representation dtd.4.8.2014(Annexure-A11) to consider his claim/retirement under Rule 38 and withdrawal of letter dtd.1.8.2014 as not pressed for.

3. Being aggrieved with the letter dtd.14.8.2014(Annexure-A12) and 30.7.2014, he had filed an OA.335/2015 which was dismissed by the Tribunal vide its order dtd.24.11.2016(Annexure-A13). Further he preferred Review Application No.13/2017 which was also dismissed vide order dtd.11.4.2017(Annexure-A14). The applicant submitted representations dtd.5.1.2017(Annexure-A15) and 1.2.2017(Annexure-A16) requesting for withdrawal of VR and reinstatement into service. The 3rd respondent issued a letter dtd.16.2.2017(Annexure-A17) rejecting his request. Further the applicant submitted a detailed representation dtd.11.12.2017(Annexure-A18) to the 3rd respondent to consider his case under Rule 38 of CCS(Pension) Rules, 1972, which is also rejected by the 3rd respondent vide his letter dtd.2.1.2018(Annexure-A19). Being aggrieved by the action of the respondents, he has again approached this Tribunal in OA.No.23/2018 which was further withdrawn with liberty to file fresh OA.
4. The applicant submits that according to Appx.5(Instructions regarding premature retirement)-CCS(Pension) Rules-Rule(6) wherein OM dtd.24.12.1976(Annexure-A20) provides for recovery of Death-Cum-Retirement Gratuity and pension paid to Govt. servants prematurely retired and subsequently reinstated in service etc. Rule 56(1-A)(a) & (b) provides that a Govt. servant may make a request in writing to the appointing authority to

accept notice of less than three months giving reasons therefor and on receipt of which, the appointing authority may consider such request for 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 Govt. servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months. A Govt. servant, who was 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. Provided that the request for withdrawal shall be within the intended date of his retirement(Annexure-A21).

5. The applicant relies on the judgment of Hon'ble Apex Court in *Bhagwan Dass & Another Vs. Punjab State Electricity Board* decided on 4.1.2008(Annexure-A22) according to which termination of the disabled employee is held to be bad in law and illegal. In pursuance of the said judgment, the DOPT has issued an OM dtd.19.5.2015(Annexure-A23) according to which, whenever a Govt. servant seeks voluntary retirement citing medical grounds or due to disability, the administrative authorities shall examine as to whether the case is covered under Section 47 of PWD Act, 1995. In case the provisions are applicable, the Govt. servant shall be advised that he/she has the option of continuing in service with the same pay scale and service benefits. The applicant having kidney ailment is availing facilities from CGHS and unable to bear medical expenses/bills. He produced his medical history at Annexure-A24. He has lost his memory, mental illness-Mild Cerebral Astrophy which is certified by CGHS(Annexure-A25). The CGHS Psychiatrist has issued a certificate dtd.15.6.2018(Annexure-A26) stating that the applicant is suffering

OA.No.170/00732/2018/CAT/Bangalore Bench from chronic schizophrenia for more than 20 years. The applicant produces the discharge summary report for being presented with DJ stent removal and also procedure advised Pyeloplasty and Left Nephrectomy(Annexure-A27). He also produced the test advice/medical treatments given from the year 2014 to 2018 at Annexure-A28. He further submits that he is ready to repay the pensionary/retirement benefits with interest as per CCS(Pension) Rules and prayed for the relief as stated above.

6. The respondents have filed their reply statement wherein they submit that the applicant while working as Senior Accountant in the 3rd respondent office has submitted a request on 3.6.2014 for Voluntary Retirement(VR) on personal ground w.e.f. 1.9.2014 i.e. by giving three months' notice. However, vide his letter dtd.13.6.2014 requested that his VR be accepted w.e.f. 2.7.2014 and accordingly his VR was accepted by the Competent Authority w.e.f. 2.7.2014 FN and office order dtd.27.6.2014 was issued. The applicant vide letter dtd.1.7.2014 requested that his VR be treated as invalid retirement and requested to give appointment to his daughter Smt.C.N.Lakshmi. The applicant was intimated vide letter dtd.30.7.2014 that since his VR w.e.f. 2.7.2014 FN under Rule 48 of CCS(Pension) Rules had already been accepted, his request for VR under Rule 38 of CCS (Pension) Rules (Medical Grounds) was not accepted by the competent authority. On 1.8.2014(Annexure-R2), the applicant accepted orders of competent authority and requested to release the pensionary benefits. The respondents have given the details of pensionary benefits viz., DCRG, Difference of DCRG, CVP, Terminal Leave Benefit(TLB), Difference of TLB in a tabular form. They submit that according to Rule 48(2), if a Govt. servant who opted 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 special approval of such authority. Therefore, the applicant was statutorily barred from seeking VR under medical grounds. The applicant's daughter Smt.C.N.Lakshmi had requested vide letter dtd.11.7.2014(Annexure-R3) for compassionate appointment as her father(applicant) had taken VR on medical grounds. The respondents submit that the applicant was permitted to retire voluntarily under Rule 48(personal grounds) and not under Rule 38 (medical grounds) of CCS(Pension) Rules. Therefore, the request of the applicant's daughter was not considered. It is submitted that request for compassionate appointment cannot be claimed as a matter of right. Further there is no provision for compassionate appointment on humanitarian grounds.

7. Further, the applicant requested the 3rd respondent on 15.07.2014(Annexure-R4) to refer him to Medical Board to certify about his mental illness. As per Govt. of India decision(i) below Rule 38 of CCS Pension Rules, 1972 'report of Medical Board to precede or coincide with the actual date of retirement applied for on the grounds of invalidation'. However, in this case, the applicant had requested to refer him to Medical Board after his date of retirement. Moreover, vide letter dtd.01.08.2014 he accepted VR under Rule 48 of CCS(Pension) Rules and requested to release retirement benefits. Applicant has filed several representations requesting to withdraw letter dtd.01.08.2014 and claimed retirement under Rule 38 of CCS(Pension) Rules and also requested for withdrawal of VR. But the same are not considered by the respondents. Aggrieved by the same the applicant has filed OA.335/2015 which was dismissed by this Tribunal upholding the acceptance of VR by the respondents. Another OA.No.23/2018 filed by the applicant was also dismissed as withdrawn. The applicant again filed the present OA which is barred by res-judicata as it is similar to the questions raised and reliefs sought

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in the earlier OAs.

8. The Rule 56 (1-A) (a) & (b) & (2) extracted by the applicant also says that 'provided that the request for withdrawal shall be within the intended date of his retirement. But the applicant retired voluntarily on 2.7.2014. He requested vide letter dtd.1.7.2014 that his VR be treated as invalid retirement and requested to give appointment to his daughter Smt.C.N.Lakshmi. The respondents vide letter dtd.30.7.2014 intimated that since VR w.e.f. 2.7.2014 under Rule 48 of CCS(Pension) Rules had already been accepted, his request for VR under Rule 38 of CCS (Pension) Rules (Medical Grounds) was not accepted by the competent authority. The judgment of the Hon'ble Apex Court in *Bhagwan Dass & Another Vs. Punjab State Electricity Board* cited by the applicant is totally inapplicable to his case as in that case, the person who was disabled was terminated from service while the applicant in this case took VR on personal grounds. The OM dtd.19.05.2015 is also not applicable to the applicant as the same is applicable only to those who take VR on medical grounds.
9. On the contention of the applicant that after taking VR he is under constant medical treatment from CGHS and unable to bear medical expenses, the respondents submit that the medical expenses of CGHS beneficiary is borne by CGHS. The ailments and medical treatments as stated by the applicant have taken place after his retirement from service and the same is not within the knowledge of the Office and his present condition especially the fact that he has lost memory and suffers from mental illness is not a ground for reinstatement into service. The averment of the applicant that he is suffering from chronic schizophrenia for more than 20 years and is under regular treatment during the time of taking VRS between 3.6.2014 and 31.8.2018 for

the past many years in NIMHANS is not within the knowledge of the office. And there is no provision under CCS(Pension) Rules or any other rules to withdraw the VR of the applicant by receiving back the retirement benefits already paid. Therefore, the OA being devoid of any merit is liable to be dismissed with costs.

10. The applicant has filed rejoinder reiterating the facts already mentioned in the OA and submits that Govt. of India, Min. of Personnel, Public Grievances and Pension, DOPT vide OM dtd.19.5.2015(Annexure-A30) indicates at para-2 that 'instances have come to notice where Govt. servants apply for VR under various provisions like Rule 38, 48 and 48A of CCS(Pension) Rules, 1972 or Rule 56 of the Fundamental Rule on account of hardships faced by them due to a disability, as they are unaware of the protection provided by the Section 47 of the Persons With Disabilities(Equal Opportunities, Protection of Rights and Full Participation) Act, 1955.

11. The respondents have filed additional reply enclosing therewith Annexure-R2 letter dtd.1.8.2014 submitted by the applicant accepting VR and requested for release of retirement benefits.

12. We have heard the Learned Counsel for the parties. The Learned Counsels for the applicant and the respondents have made submissions reiterating the factual position and their points as highlighted by them in the OA and the reply statements. The applicant has filed written arguments note highlighting his points enclosing therewith his entire medical records. The respondents have also filed their written arguments note.

13. We have gone through the main contentions of the applicant and replies of the respondents in detail. The points raised by the applicant have already

OA.No.170/00732/2018/CAT/Bangalore Bench been traversed in detail by this Tribunal in OA.No.335/2015 which was dismissed on 24.11.2016. The RA.No.13/2017 filed against the order in OA.No.335/2015 has also been dismissed on 11.4.2017. The applicant has sought to file this OA requesting for reinstatement into service with details of medical treatment undergone etc. along with certificates stating that he has been suffering from chronic schizophrenia for more than 20 years. The respondents have rightly contended that a person who has to seek voluntary retirement on medical grounds has to follow the procedure prescribed regarding that including appearing before the medical authorities etc., with the full knowledge of the respondents' organisation. The Hon'ble Apex Court judgment in *Bhagwan Dass & Another Vs. Punjab State Electricity Board* cited by the applicant is not of any assistance to him as in that case the employee had sought for voluntary retirement on medical grounds whereas in the present case, the applicant has sought voluntary retirement on personal grounds which was also accepted by the respondents. The issue has already been traversed by this Tribunal in detail as already noted above. The applicant had accepted his voluntary retirement vide his own letter dtd.01.08.2014(Annexure-R2) and hence his request for reinstatement into service cannot be accepted in view of his own contention of suffering from schizophrenia for the past two decades. There is no merit in the OA. The OA is dismissed. No costs.

(C.V.SANKAR)
MEMBER (A)

/ps/

(DR.K.B.SURESH)
MEMBER (J)

Annexures referred to by the applicant in OA.No.170/00732/2018

- Annexure-A1: Application dtd.3.6.2014
- Annexure-A2: Representation dt.13.6.2014
- Annexure-A3: Representation dt.1.7.2014
- Annexure-A4: Representation dt.21.7.2014
- Annexure-A5: Letter dt.27.6.2014
- Annexure-A6: Representation dt.1.7.2014
- Annexure-A7: Letter dt.30.7.2014
- Annexure-A8: Medical Certificate
- Annexure-A9: Medical Certificate
- Annexure-A10: Appeal dt.1.8.2014
- Annexure-A11: Representation dt.4.8.2014
- Annexure-A12: Letter dt.14.8.2014
- Annexure-A13: Order dtd.24.11.2016 in OA.No.335/2015
- Annexure-A14: Order dtd.11.4.2017 in RA.No.13/2017
- Annexure-A15: Representation dtd.5.1.2017
- Annexure-A16: Representation dtd.1.2.2017
- Annexure-A17: Letter dt.16.2.2017
- Annexure-A18: Representation dt.11.12.2017
- Annexure-A19: Letter dt.2.1.2018
- Annexure-A20: Appx.5-(Instructions regarding premature retirement) Swamy's-CCS (Pension) Rules-Rule (6) wherein office memorandum dt.24.12.1976
- Annexure-A21: Rule 56 (1-A) (a) of FR&SR Part-1
- Annexure-A22: Judgment of the Hon'ble Apex Court in Bhagwan Dass and another vs. Punjab State Electricity Board decided on 4.1.2008
- Annexure-A23: Office Memorandum dtd.19.5.2015
- Annexure-A24: Medical History
- Annexure-A25: Medical History
- Annexure-A26: Certificate dt.15.6.2018
- Annexure-A27: Medical History
- Annexure-A28: Medical History

Annexures with reply statement:

- Annexure-R1: Copy of order dtd.19.07.2018 in OA.No.23/2018
- Annexure-R2: Copy of Letter dtd.01.08.2014 of the applicant
- Annexure-R3: Copy of Letter dtd.11.07.2014 of the applicant's daughter
- Annexure-R4: Copy of Letter dtd.15.07.2014 of the applicant

Annexures with rejoinder:

**Annexure-A29: Rule 48 and 48-A, FR 56
Annexure-A30: DOP&T OM dt.19.5.2015**

Annexures with additional reply:

Annexure-R2: Copy of the letter dtd.1.8.2014 of the applicant

Annexures with written arguments note filed by the applicant:

Annexure-1: Entire medical history of the applicant
