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OA 350/351/2013

**CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH**

OA 350/351/2013

Heard on: 04.04.2019

Date of Order: 11.04.2019

Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member

Hon'ble Dr. Nandita Chatterjee, Administrative Member

Shree Ashutosh Dutta,  
Son of Late Kashi Nath Dutta,  
was working as Sr. S.S.A at SRO,  
Howrah,  
Residing at 63/1, Dakshinpara Road,  
Kolkata - 700 036.

... Applicant.

Versus

1. Union of India,  
Service through the Secretary,  
Ministry of Labour & Employment,  
Government of India,  
Shramashati Bhawan,  
Rafi Marg,  
New Delhi - 110 001.

2. The Assistant P.F. Commissioner(Admn),  
Employees P.F. Organisation,  
(Ministry of Labour & Employment,  
Government of India),  
D.K. Block, Sector-II,  
Salt Lake City,  
Kolkata - 700 091.

3. The Assistant P.F. Commissioner(Admn)  
Employees P.F. Organization,  
(Ministry of Labour & Employment,  
Government of India),  
Sub-Regional Office,  
Howrah, 22G, T. Road,  
Howrah - 711 101.

4. Regional P.F. Commissioner-I,  
Employees P.F. Organization,

*hesh*

Regional Office, Kolkata,  
Bhavishyanidhi Bhawan,  
DK Block, Sector-II, Salt Lake,  
Kolkata – 700 091.

5. Regional P.F. Commissioner-II,  
O.C. Employees P.F. Organization  
(Ministry of Labour & Employment,  
Government of India),  
Sub-Regional Office, Howrah,  
24, Belilious Road,  
Howrah – 711 101.

6. Assistant P.F. Commissioner,  
Zonal Office, Kolkata,  
Office of the Additional Central  
Provident Fund Commissioner,  
DK Block, Sector-II, Salt Lake City,  
Kolkata-700 091.

... Respondents.

For the Applicant(s)

For the Respondent(s)

Mr. R. Biswas, Counsel

Mr. K. Sarkar, Counsel

**ORDER**

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has approached the Tribunal praying for the following relief:

*"8.(a) An appropriate order of cancelling and setting aside the impugned order no.T-143 dated 26.07.2012 issued by S.C. Sengupta, Assistant Provident Fund Commissioner (ADM), Regional Office, Kolkata;*

*(b) an appropriate order of cancelling and setting aside the impugned order no.WB/1/WR/Adm/PF/A-65/Vol-I/160 dated 27.07.2012 issued by S.N. Bhuyan, Assistant Provident Fund Commissioner(Adm);*

*(c) An appropriate order declaring the impugned order of voluntary retirement order no T-143 of RPFC-1, R.O. Kolkata issued under memo no. Pens. 1/VR/1383/AD/Vol-1 dated 26.07.2012 followed by SRO, Howrah's order no. 166 memo no. WB/HWR/ADM/PF/A-65/Vol-1/160 dated 27.07.2012 is wholly illegal, void and not sustainable in the eye of law;*

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(d) *An appropriate order of quashing the order of voluntary retirement w.e.f. 27.07.2012 and direct the respondents authorities to continue the applicant in service with all consequential and attendant benefits;*

(e) *An appropriate order staying the operation of the order of voluntary retirement w.e.f 27.07.2012 and allow the applicant to continue this service pending disposal of this original application;*

(f) *Costs;*

(g) *Any such other relief or reliefs as this Hon'ble Tribunal would deem fit and proper;"*

2. Heard both Ld. Counsel, examined pleadings and documents on record.

Ld. Counsel for the applicant would cite the judgement of the Hon'ble Apex Court passed in the case of **Punjab National Bank Vs. Virender Kumar Goel & Ors., Review Petition (Civil) 53 of 2003, Appeal (Civil) 896 of 2002**, as well as orders of the Tribunal in O.A. 1223/2014 dt. 21.03.2018. Ld. Counsel for the Respondents, on the other hand, would refer to **State Bank of Patiala Vs. Kanwal Nain Singh, (2018) 17 SCC 305**, in their support.

3. The submissions of the applicant, as made through his Ld. Counsel, in brief, are that the applicant was appointed by the Respondent authorities on 10.09.1984 as LDC. That, while he was serving in the Howrah Office, he started suffering from acute spondylosis, which prevented him attending office on regular basis. His eyesight also prevented him from working on the computer. Consequently, he had applied to the Respondent authorities on 31.05.2012 to allow him to retire from service voluntarily on medical grounds. That, his application was duly forwarded to the competent Respondent authority by his immediate superior on the very same day,

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namely 31.05.2012 itself. The applicant, however, apprehending that he would not be able to bear medical expenses for his ailing son, decided to withdraw the said application for voluntary retirement on 05.07.2012 and, according to the applicant, he submitted the same to his immediate superior to be forwarded to the competent Respondent authority through proper channel. The competent Respondent authority, however, vide their orders dated 26.07.2012 informed that the applicant was permitted to retire voluntarily w.e.f. 27.07.2012 in terms of provision of Rule 48-A(3-A) (b) of CCS (Pension) Rules, 1972 and, according to the applicant, he was, thereafter, released from service on 27.07.2012.

The applicant, thereafter, made several representations to the authorities to consider his prayer for withdrawal of voluntary retirement but was ultimately informed vide the Respondents' communication dated 18.09.2012 that, as his voluntary retirement has already been given effect to, his prayer could not be acceded to. According to the applicant, he was well within his rights under the provisions of Sub Rule 1 of Rule 48-A(3-A) of CCS (Pension) Rules, 1972 to withdraw his prayer for voluntary retirement, and, such withdrawal was within the specific time limit. The applicant, being aggrieved, has challenged the action of the Respondents in not allowing him to withdraw his voluntary retirement in the instant O.A.

The applicant has cited, inter alia, the following grounds in support of his ground:

- (a) That, the order of the Respondent authorities dated 26.07.2012 is arbitrary and illegal as the applicant had submitted his application

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praying for withdrawal of the prayer of voluntary retirement earlier to the date of acceptance of his prayer by the authorities.

(b) That, the applicant's prayer for withdrawal was well within time limit as provided under Sub Rule 1 of Rule 48-A(3-A) of the CCS (Pension) Rules, 1972.

4. The Respondents, to the contrary, have argued that, the applicant's prayer dated 31.05.2012 for voluntary retirement primarily referred to his ailments in the form of acute spondylosis and failing eyesight, and that the said request was duly forwarded to the competent Respondent authority after calling for his vigilance clearance certificate. The vigilance clearance certificate dated 20.06.2012, however, stated as follows:

**"EMPLOYEES' PROVIDENT FUND ORGANISATION**  
(Ministry of Labour, Government of India)  
**OFFICE OF THE DY. DIRECTOR (VIGILANCE), EAST ZONE**  
**BHAVISYA NIDHI BHAWAN, DK-BLOCKK, KARUNAMOYEE**  
**SECTOR-II, SALT LAKE CITY, KOLKATA - 700091.**  
**Ph:23593687, Fax:23586773, E-mail: [ddvepfoez@rediffmail.com](mailto:ddvepfoez@rediffmail.com)**

No. DDV/EZ/VIG/WB/VIG/CLR/2012-2013/VOL-VIII/431 Date:23 JUN 2012

To  
The Employees' Provident Fund Organisation  
Regional Office, Kolkata

By name to:  
Shri S.C. Sengupta,  
APFC(ADM)

Sub: Vigilance Clearance Certificate-regarding.

Sir,

This is with reference to letter No.Pers-I/VR/383/AD/Vol-I/225 dated 20/06/2012 on the subject cited above.

Sl. No.	Name & Designation of the Official	Vigilance Profile
1	Shri Ashutosh Dutta, Sr.SSA,SRO, Howrah.	<b>SRO/Park Street/AVS:: A Chargesheet Under Rule-12 of EPF Staff(CCA) Rules, 1971 has been issued in respect of the Official from SRO/Part Street vide U.O.No.SRO/PRB/AVS/WB/AD/20 11-12/7 dated 20/06/2011 for not</b>

		<p>attending to the task of issuing of Annual Accounts &amp; for unauthorised absence from duty on flimsy ground.</p> <p><b>A Penalty of "Withholding one future increment starting from <u>July, 2011</u> with cumulative effect" has been imposed upon the Official from SRO, Park St. Vide No. E.P.F.O./SRO/PRB/RC/AVS/WB/AD/2011-12/29(ii) dated 21/07/2011.</b></p> <p><b>Before granting Clearance, RO/Kolkata to verify the currency of Penalty.</b></p>
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**Further, it is also requested to verify the Vigilance profile/Vigilance status of the concerned Official maintained in your records for administratively initiated cases, criminal cases and pending complaints of serious nature before issuing final NOC.**

Yours faithfully,

Sd/-

(R.K. SAHOO)

**DEPUTY DIRECTOR (VIGILANCE) (E.Z.)**

Thereafter, the Respondents called for his no due certificate, and, after obtaining the same, permitted the applicant to retire voluntarily on 26.07.2012 and he stood released on 27.07.2012.

Respondents have further averred that the applicant's prayer dated 05.07.2012 for withdrawal of voluntary retirement was received directly by the Regional Office, Kolkata without any forwarding letter from Controlling Office of the applicant. The Regional Office, Kolkata, after receipt of the prayer for withdrawal, directed the Controlling Office of the applicant on 24.07.2012 to convey the comments of the Controlling Office as the said letter had been received directly in that office and not through proper channel. The Controlling Office at SRO, Howrah replied forthwith on 25.07.2012 as follows:

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**"EMPLOYEES' PROVIDENT FUND ORGANISATION  
Ministry of Labour & Employment, Govt. of India  
Sub Regional Office Howrah  
24, Bellious Road,  
22, G.T. Road,  
HOWRAH – 711 101.**

No. WB/HWR/RC's Secretariat/AVS/Vol-I/58      Date: 25/07/2012.

**By name to:**  
**Sri S.C. Sengupta,**  
**A.P.F.C.(Adm).**

To  
The Regional P.F. Commissioner,  
Employees' P.F. Organisation,  
Bhavishyanidhi Bhawan,  
DK Block, Sector – II,  
Salt Lake City,  
Kolkata – 91.

**Subject: Request for withdrawal of application for  
Voluntary Retirement in Respect of Sri Ashutosh  
Dutta, SSSA, SRO, Howrah – Reg.**

Ref: Your letter No. Pers-I/383/AD/Vol-I/295,  
dtd. 24/07/2012.

Sir,

With reference to above, it is to inform that we were not aware of any request for withdrawal of V.R.S. application of Sri Ashutosh Dutta, SSSA till receipt of above referred letter.

However, upon receipt of your fax letter dated 24/07/2012, we have verified the facts and it has come to notice that Sri Dutta himself entered the dispatch number in Despatch Register of A/c. Gr./XI (Where he is working as Dealing Assistant) after putting it in a envelop and addressing it to you and sender as RC's Cell and handed over to concern clerk of Dispatch Section and accordingly considering that the letter no. written in the envelop tallied with the letter and the letter dispatched alongwith other correspondences to Regional Office for the day i.e. 05/07/2012.

I would like to mention here that this is not the first time that Sri Dutta indulged in such activity, earlier vide letter No. WB/HWR/RC's Cell/AVS/Vol-I/309, dated 18/06/2012, this Office has sent a detailed letter giving details of his mis-deeds with copies of documentary evidences.

As regard to the request of Sri Dutta for withdrawal of his VRS, it is submitted that the ground given by Sri Dutta for seeking VRS was his ill-health and in the present application he has stated that due to sickness of his son he want to continue in the service. Thus, it is clear that the reason for seeking VRS i.e. ill-health of Sri Dutta is

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*still continues and if his VRS application is accepted, there will not be any hardship to his family as even after retirement an employee is eligible for medical care of himself and family members as per rules.*

*Hence, in the light of the facts and circumstances narrated earlier vide earlier letters of this Office on the subject, it is recommended that VRS application of Sri Dutta dated 31/05/2012 should be accepted forthwith and he should be relieved from the employment of EPFO immediately which will be in the best interest of the Organisation and Sri Dutta also as his continuation in the Organisation may cause irreparable loss to the Organisation on account of lack of productivity on his part and his habit of indulging in mischiefs as reported vide this letter and earlier letter dated 18/06/2012 of this Office and due to his frequent illness and also cause problem for his family if action is taken for his misdeeds and if any punishment is awarded to him by the competent authority.*

*Lastly, it is requested that if competent authority decides to accept the request of the official for withdrawal of his V.R.S. application, he should be placed under suspension immediately pending further investigation of serious allegations of misconduct against him (already reported) and if for some reason, it is also not possible to place him under suspension then he should be at least immediately removed from the roll of SRO, Howrah as his continued presence here is not only acting as a great demotivation for the entire staff and Officers of this Office but is also a question mark on the authority of the Officer in Charge.*

*This issues with the approval of RPFC/OIC.*

Yours faithfully,

Sd/-

(S. N. BHUYAN)

ASSISTANT P.F. COMMISSIONER (ADM),

S.R.O., HOWRAH."

As the Controlling Office strongly recommended that the applicant concerned was found guilty of the misdeeds, and that, his continuance in the organization would cause irreparable loss to the organization on account of his lack of productivity and his habit of indulging in mischief, the competent authority accepted the prayer of the applicant for voluntary retirement and allowed him to be released from service of the Respondent authorities. Respondents, in their reply and also through the supplementary

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affidavit as directed by this Tribunal, provided details of the retiral dues received by the applicant. According to the Respondents, given the fact that his relationship with the Respondent authority has ceased, and that he has already availed of his retiral dues, the O.A. deserves to be dismissed as devoid of any merit.

5. The main point of determination for adjudication in the instant matter is whether the applicant's representation dated 05.07.2012 for withdrawal of his prayer for voluntary retirement dated 31.05.2012 deserved consideration by the Respondent authorities.

6.1 At the outset, we refer to the applicant's prayer for voluntary retirement at Annexure-A/2 to the O.A. which is quoted as below:

"To

The Regional Provident Fund Commissioner (I)  
Employees' Provident Fund Organisation  
Regional Office, Kolkata  
DK Block, Sector II  
Salt Lake City, Kolkata.

Through proper channel

Sub: Appeal for acceptance of Voluntary Retirement – req.

Sir,

Most respectfully and humbly I beg to state that as I am a patient of acute spondylosis and I am not in a position to attend office on regular basis. It has become very painful to me continuous sitting in the chair to work properly. Moreover, my eyesight is not permitting me to sit before the monitor which is affecting my both the eyes. Very recent past while I went to an eye specialist I had been advised to avoid the job of computer constantly. As a result, at present I am unable to satisfy my superiors.

In the above circumstances I do appeal to your good office to accept my appeal for voluntary retirement at an early date on medical ground and I may kindly be allowed to go on leave w.e.f. 01.06.2012 on medical ground till acceptance of my voluntary

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retirement. The leave application as per format is enclosed for your ready reference.

Dated, Howrah  
The 31<sup>st</sup> May, 2012

Yours faithfully,  
Sd/-  
(ASHUTOSH DATTA)  
SSSA  
A/c. Gr-XI, SRO, HOWRAH"

From the above, it is inferred that the applicant has not indicated anywhere in his prayer the specific date on which he intended to proceed on voluntary retirement thereby violating the basic requirement of Sub Rule 1 of Rule 48-A of CCS(Pension) Rules, 1972, which states as follows:

"(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."

6.2 Next, we refer to his withdrawal of prayer for voluntary retirement as annexed at Annexure-A/4 to the O/A, which reads as follows:

"To

The Regional Provident Fund Commissioner-I  
Employees' Provident Fund Organisation  
DK Block, Sector-II, Salt Lake City,  
Kolkata - 700 091.

THROUGH PROPER CHANNEL

Sub : Prayer for withdrawal of application for voluntary retirement in respect of Sh. Ashutosh Dutta, Sr. SSA, SRO - Howrah.

Sir,

Most respectfully I beg to inform you that I have applied for voluntary retirement vide application dated 31.05.2012 due to my ill health. Subsequent to my said application I am in a very distress condition due to severe illness of my son who is a neuro patient and his treatment is undergoing. Relevant medical documents in support of my contention are enclosed herewith for your kind perusal.

Under the above circumstances my voluntary retirement from the service will badly affect the treatment of my son because of my financial constraint as presently I am not in a position to bear the

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huge medical expenditure for my son from my personal savings as there is a recurring expenditure for myself also. As such my application dated 31.05.2012 for voluntary retirement may kindly be treated as withdrawn. I ensure that I shall put all out effort in my official duty to the best satisfaction of my superiors and if possible I may kindly be posted at Regional Office, Kolkata for my convenience to attend office from my residence and oblige.

Thanking you,

Yours faithfully,  
Sd/-

(ASHUTOSH DUTTA)  
SR. SSA, SRO-HOWRAH"

Dated : 5/7/2012

It is deciphered from above that, in his prayer for voluntary retirement the applicant has cited his personal medical infirmities, and, in his withdrawal application he has mostly referred to the severe illness of his son. As the severity of his son's illness was known to him on 31.05.2012, the date of his prayer for voluntary retirement, apparently made without considering his family compulsions, appears to be contrary to his prayer for withdrawal.

6.3 When the applicant had prayed for voluntary retirement, the said representation was forwarded through proper channel as per Annexure-A/3 to the O.A. but, when he decided to withdraw his application for voluntary retirement, there is nothing on record to prove that the said prayer for withdrawal of application was routed through the proper channel, which was a mandatory requirement in terms of office procedure.

The Respondents have furnished before us a communication of Respondent authorities at Annexure-R/10 to their reply dated 24.07.2012, which refers to the fact that the said application had not been forwarded through proper channel as quoted above (supra). This proves that although the applicant has urged in his pleadings that his representation was indeed forwarded through proper channel, the Respondents have produced

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documents, which establish their claim that the applicant's representation was not forwarded through proper channel and it was only when the Addressee Authority sent it back to the Controlling Office vide their letter dated 24.07.2012 that the Controlling Office came to know about the fact that the applicant had preferred a representation for withdrawing his prayer for voluntary retirement.

Respondents have also brought on record certain facts, which reveals that the actions of the applicant in forwarding his withdrawal application was not bonafide in nature as he had entered the dispatch number in the Dispatch Register where he was working as a Dealing Assistant himself and placed it in an envelope addressed to R.O., Kolkata after recording sender as R.C.'s cell and handed over the same to the concerned clerk of Dispatch Section and as the dispatch number written on the envelope tallied with the letter, it was dispatched to RO, Kolkata. The applicant has not controverted the allegation of his taking resort to such dubious means to avoid proper channel in forwarding his withdrawal application either in his rejoinder or in his supplementary affidavit. Hence as recorded in the Respondents' pleadings, and, in the absence of any contrary averments, it is established that the withdrawal application of the applicant was not forwarded through proper channel to the competent authority.

6.4 The provisions for retirement and completion of 20 years qualifying service, as provided in Rule 48 (A) of the CCS (Pension) Rules, 1972, are quoted as below:

*"(1) At any time after a Government servant has completed twenty years' qualifying service, he may, by giving notice of*

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*not less than three months in writing to the Appointing Authority, retire from service.*

XXX

XXX

XXX

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

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

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

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

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

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

The following have been laid down in the above mentioned rule:

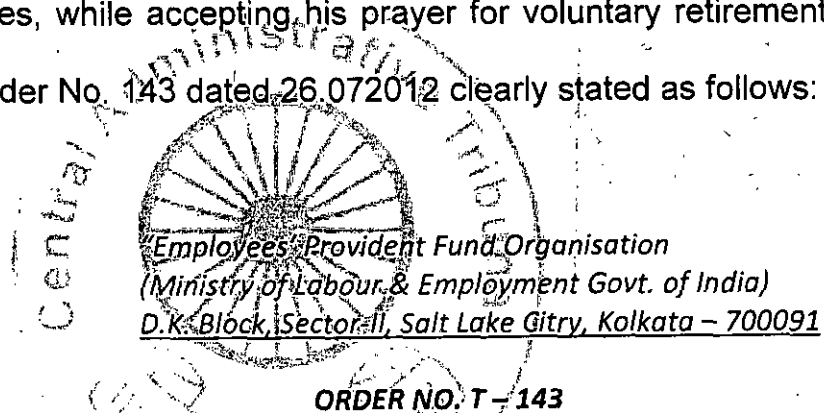
- (i) At the time, after a Govt. servant completed 20 years qualifying service, he may, by giving notice not less than three months in writing to the appointing authority, retire from service.

Herein, the Ld. Counsel for the applicant clarified at the time of hearing that the applicant had put in 29 years of service. Consequently, Rule 48-A of the CCS (Pension) Rules, 1972 applied to him.

- (ii) To apply for voluntary retirement, a notice of not less than three months had to be given in writing to the appointing authority

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clearly indicating as to which is the specific date wherefrom the employee intended to proceed on voluntary retirement. The intended date of retirement was hence a mandatorily requirement. The applicant left his notice open ended. Hence, in the absence of any specified date, the Respondent authorities had to decide within 31.08.2012 as to whether they would refuse to grant permission or whether they would accept the notice of voluntary retirement as issued under Sub rule 1 of Rule 48(A) of the CCS(Pension) Rules. The Respondent authorities, while accepting his prayer for voluntary retirement, in the order No. 143 dated 26.07.2012 clearly stated as follows:



*Shri Ashutosh Dutta, Sr.SSA posted at Sub Regional Office, Howrah is hereby allowed to retire voluntarily with effect from 27.07.2012 (A/N) in terms of the provisions of Rule 48-A(3-A)(b) of the CCS (Pension) Rules 1972, however he shall not apply for commutation of a part of his pension before the expiry of three months' from the date of his application i.e. 31.08.2012.*

*This issues with the approval of Regional Provident Fund Commissioner-I, Regional Office, Kolkata.*

Dated : 26.07.2012

Sd/-  
(S.C. SENGUPTA)  
ASSISTANT PROVIDENT FUND COMMISSIONER (ADM)  
Regional Office, Kolkata"

It is clear from the above that the applicant was allowed to retire in terms of provision of Rule 48-A(3-A)(b) of the CCS(Pension) Rules, 1972.

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Respondent authorities decided that curtailment of period of notice as required under the Rules would not cause administrative inconvenience as because the applicant was no longer rendering productive service but rather habitually indulged in mischievous activities while in service. Hence, his prayer for voluntary retirement was accepted before 31.08.2012. The Respondents have averred in their reply that no notice period was indicated by the applicant in his prayer for voluntary retirement, and, as his prayer for withdrawal was not routed through proper administrative channel, the said prayer of withdrawal was void and is a nullity.

6.5 Respondent authorities have strengthened their averments by stating that the applicant had been disbursed all his retiral dues, which has been admitted by the applicant in supplementary affidavit furnished by him on 22.09.2014 in response to directions of the Tribunal. The admission of the applicant on the details of the retiral benefits received by him are as follows:

*"A. Monthly pension from July 27, 2012 A.N. (date of giving effect to the voluntary retirement of the applicant herein by the authority concerned) till August, 2014.*

*B. salary for the period from July 1, 2012 to July 27, 2012 amounting to Rs. 21,241/- paid on July 28, 2012.*

*C. A sum of Rs. 34,758/- paid on August 7, 2012 on account of Fixation of increment.*

*D. A sum of Rs. 77,888/- paid on August 7, 2012 on account of Leave Encashment.*

*E. A sum of Rs. 26,155/- paid on August 7, 2012 on account of Staff Provident Fund upto the date of Voluntary Retirement.*

*F. A sum of Rs. 6,88,584/- paid on December 18, 2012 on account of Gratuity & Commutation of Pension with the adjustment of Co-operative dues.*

*G. A sum of Rs. 1,20,524/- paid on March 20, 2013 on account of reimbursement of the cost of treatment of the son of the applicant herein in B.P. Poddar Hospital against Medical Bill dated January 23 2013.*

*A Photostat copy of each document in support of the above are annexed hereto and collectively marked as Annexure "S-1".*

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2. Your applicant states that your applicant is yet to receive the following dues-

- I. Bonus for the period of 2012-13.
- II. Fixation of correct arrear increment from July, 2011 to July 27, 2012.
- III. Benefits of Group Insurance Scheme.
- IV. A sum of Rs. 1,27,967/- against the claim for medical reimbursement for the treatment of the son of the applicant in B.P.Poddar Hospital against the Medical Bill of Rs. 2,48,491/- dated January 23, 2013."

According to the applicant, he claimed the benefits as per Annexure-A/12 to the O.A. without prejudice to his legal rights. But, the fact remains that such benefits were received by him w.e.f. 28.07.2012, as averred by the Respondents in their reply to the supplementary affidavit.

6.6 The applicant, to emphasize the fact that although he had accepted his retiral benefits, such acceptance did not lead to closure of his prayer for withdrawal of voluntary retirement, has cited the judicial decision in **Punjab National Bank Vs. Virender Kumar Goel & Ors** dated 21.01.2004, in which the Hon'ble Court had directed as follows:

*"We make it clear that the sentence, "accepted a part of benefit under the scheme", appeared in our direction as noticed above, would include the withdrawal of the benefit and utilisation thereof. By no stretch of imagination, unilateral deposit of a part of benefit under the scheme into the bank account, that too after withdrawal of the application, would construe as to have accepted the part of the benefit under the scheme, when the same was neither withdrawn nor utilised by the employee concerned."*

We find, however, that the judicial pronouncement refers to a particular contractual scheme under which the petitioners had been sanctioned their ex-gratia payment. In the instant matter, there was no unilateral deposit into the applicant's bank account as he had claimed the same and the applicant was not guided by a contractual scheme but by

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CCS(Pension) Rules, 1972. In the same order, the Hon'ble Court further held that having accepted the benefit under the scheme by withdrawal and utilization thereof, the applicants are not permitted to approbate and reprobate further. For the last seven years, the instant applicant has withdrawn and utilized his retiral dues to his benefit and hence, in terms of the ratio in **Punjab National Bank Vs. Virender Kumar Goel & Ors (supra)**, he cannot approbate and reprobate at this stage.

6:7 Ld. Counsel for the applicant urged that, as this Tribunal, in O.A.No. 1223/2014, vide order dated 21.03.2018, had directed the Respondents to decide the matter as per Rule 88 of the CCS (Pension) Rules, 1972, similar consideration be granted in the instant O.A. We note that Rule 88 of the said Rules refers to the power to relax the requirement of the rule to prevent undue hardship in any particular case. In the absence of specific averment of the applicant as to which specific component of Rule 48-A of the CCS (Pension) Rules is sought to be relaxed by the applicant in this case, we are of the view that applicability of decision in O.A. 1223/2014 stops short herein.

Respondents, on the other hand, have contended that as per the decision in **State Bank of Patiala Vs. Kanwal Nain Singh (supra)** there is a bar to withdraw application for voluntary retirement, in which the Hon'ble Court has deliberated on Voluntary Retirement Scheme for bank employees. The applicant in this instant case is not guided by any Voluntary Retirement Scheme but by the provisions of CCS (Pension) Rules, 1972 and, hence the Respondents' citation of State Bank of Patiala does not appear to be applicable in the instant matter.

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6.8 In **Balram Gupta Vs. Union of India**, AIR1987 SC 2354, it was ruled that voluntary retirement becomes effective from the date mentioned in the notice and an employee is entitled to withdraw the notice before that date. In the instant matter, no date was mentioned in the applicant's notice. Hence, the employee's right to withdraw the notice before such date is inapplicable in case of the applicant.

Further, in **Sohan Lal Vs. State of Punjab**, 2006(6) SLR 797, the Hon'ble Court decided that when an employee exercises the option of voluntary retirement, he cannot complain about the consequences.

It has also been held in **Sambhu Murari Sinha Vs. Project & Development India**, (2000) 5 SCC 621 that the effective date of voluntary retirement will be the date of release and in the applicant's case, the effective date is 27.07.2012.

In **P.Lal Vs. Union of India**, (2003) 3 SCC 393, the Hon'ble Court held that once the Government accepts the representation of voluntary retirement, the retirement becomes effective and master-servant relationship ceases to exist and it is no more open to the Government to permit the employee to withdraw such application. This ratio has been correctly applied by the Respondents when they have not entertained his representations post his date of release, informing the applicant accordingly vide their order dated 18.09.2012 (Annexure-A/9 to the O.A.)

In **Punjab National Bank Vs. Virender Kumar Goel**, 2004 (100) Fac LR 648(SC), it has been held by the Hon'ble Court that an employee, who sought voluntary retirement and subsequently wrote for its withdrawal but

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has withdrawn the amount of retirement benefits, was not entitled to the withdrawal of his application for voluntary retirement.

7. Accordingly, we find that the applicant's prayer for withdrawal of his voluntary retirement was not valid as because his earlier prayer for voluntary retirement failed to mention any notice period without which the validity of his withdrawal cannot be determined. The prayer for withdrawal, most surprisingly, was not routed through proper channel and this has been proved undisputedly by the Respondents. Further, once the employer-employee relationship has ceased as on the date of release of the applicant, as laid down in the case of **Punjab National Bank (supra)** and once the retirement benefits have been withdrawn, the retirement has been accepted and further scope of withdrawal does not arise.

Accordingly, the O.A. is dismissed on merit. If the applicant, however, decides to raise a dispute with regard to any of his retirement benefits, he is at liberty to approach the concerned forum, if so advised. There will be no orders on costs.

(Dr.Nandita Chatterjee)  
Member (A)

(Bidisha Banerjee)  
Member (J)