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COURT NO. 3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 421/2020

Ex Maj Sahil Malhan

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Chaitanya Agarwal, Advocate
For Respondents : Mr. Varun Chugh, Advocate with
Mr. Rahul Kumar, Advocate

CORAM :

HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER

OA 421/2020

Being aggrieved by the denial of disability element of pension, the applicant has filed the present OA under Section 14 of the AFT Act, 2007, wherein he was sought the following reliefs :-

- (a) To direct the respondents to set aside the impugned order(s) on the grounds of illegality and being unsustainable in the eyes of law.*
- (b) To direct the respondents to provide applicant with disability pension from dt. of release from service with interest @8% on arrears upto date of disbursement.*
- (c) To direct the respondents to grant the benefits of broad-banding of disability from 40% to 50% in terms of GOI letter dated 31.01.2001.*
- (d) Any other relief that the applicant is found entitled to and this Hon'ble Tribunal may deem appropriate, just and proper*

in the facts and circumstances of the case in the interest of justice.”

2. Brief facts of the case are that the applicant was commissioned in the Indian Army (PC/ASC) on 13.06.2009. He resigned from service on 20.08.2019 ((AN) after putting in 10 years, 02 months and 07 days of service). At the time of resignation from service, the applicant was in LMC (A2P2) (Permt) due to previous injuries. The Release Medical Board assessed his disability as (i) Fracture Transverse Process L1-L3 (S.32.1) @20% for life, (ii) Complete ACL TEAR (LT) Knee (OPTD) (S.83.5) @20% for life. Composite disability @40% for life, both disabilities were opined attributable to military service by RMB.

3. The initial disability claim of applicant was denied by the Competent Authority vide letter dated 18.11.2019 in terms of MS Branch letter no. 04588/MS : Policy dated 22.11.2001 stating that “Disability element is admissible in addition to retiring/service pension or retiring/service gratuity only in terms of MoD letter no. 16(5)/2008/D(Pen/Policy) dated 29.09.2009. Since, no pensionary entitlement is admissible on resignation, the provisions of Govt letter dated 20.09.2009 shall not be extended to those proceedings on resignation. Therefore, the officer is not entitled for grant of disability element.”

4. The contention of learned counsel for the applicant is that the injuries sustained by the applicant during his service tenure have impaired him for life, as these disabilities are attributable to service, he should be compensated for the same. The organization ought to have advised him to re-apply for premature retirement instead of resignation, once his release date was enabling him to be a premature retirement case. It is further, argued that the applicant put in his paper to resign on 07.06.2016, in around 7 years of service but the same was rejected. By the time, his 2nd resignation dated 08.08.2018 was accepted, he had completed 10 years of service, hence he should be treated as premature retirement for grant of disability element of pension.

5. Per contra it is submitted by the learned counsel for the respondents that the applicant's case is not of invalidation, he resigned his commission on this own violation. Moreover, while applying for resignation he had certified to have understood the implications and obligations/entitlements in Section IV of his 2nd resignation application dated 01.08.2018. It is submitted that the Competent Authority did not force the applicant to resign his commission. On the contrary his initial resignation dated 05.08.2016 was rejected. His 2nd application seeking permission to resign was also rejected, the applicant, then filed a review application which was also rejected vide letter dated 12.07.2018. The

applicant thereafter took the interview of the GOC 71 Sub Area in July 2018 and his insistence the 2nd resignation was forwarded and on compassionate ground accepted vide MS Branch letter dated 23.05.2019.

6. Heard the learned counsel for the parties and perused the record including original of RMB proceedings.

7. It is an admitted fact that applicant resigned from his commission on his own violation and at the time of acceptance of his resignation, he had put in more than 10 years of service. It may however be noted that for the first time when the applicant put in his resignation, though it was not accepted for any reason whatsoever, but if it would have been accepted, at that point of time, the total service rendered by the applicant was 07 years. Moreover, it is for the officer to decide whether he wanted to resign or seek premature retirement and in this case, as is evident from the facts on record, the applicant knowing fully well the consequences and the difference between the resignation and premature retirement opted to resign. He was released in LMC A2P2 with two disabilities attributable to military service and assessed compositely @40% for life.

8. The entitlement to disability pension are governed by the eligibility condition enumerated in Regulation 81 of Pension Regulations for the Army, 2008 Part-I which stipulates that unless otherwise specifically provides a disability pension consisting of service element and disability

element may be granted to an officer who is invalidated out of service on account of disability which is either attributable or aggravated by military service in non-battle casualty cases and the disability is assessed at 20% or more. A LMC Officer who retires on superannuation or on completion of tenure can also be granted disability pension under the provision of Regulation 37 of Pension Regulation for the Army, 2008 Part-I, provided he fulfills the twin eligibility conditions as stated.

Regulations 37 and Regulations 81 of Pension Regulation for the Army, 2008 Part-I read as thus :-

“37. (a) An Officer who retires on attaining the prescribed age of retirement or on completion of tenure, if found suffering on retirement, from a disability which is either attributable to or aggravated by military service and so recorded by Release Medical Board, maybe granted in addition to the retiring pension admissible, a disability element from the date of retirement if the degree of disability is accepted at 20% or more.

(b) The disability element for 100% disability shall be at the rate laid down in Regulation 94 (b) below. For disabilities less than 100% but not less than 20%, the above rates shall be proportionately reduced. Provisions contained in Regulation 94(c) shall not be applicable for computing disability element.

81. (a) Service personnel who is invalidated from service on account of a disability which is attributable to or aggravated by such service may, be granted a disability pension consisting of service element and disability element in accordance with the Regulations in this section.

Explanation: There shall be no condition of minimum qualifying service for earning service element.

(b) The question whether disability is attributable to or aggravated by military service shall be determined under the

Entitlement Rules For Casualty Pensionary Award, 1982 as laid down in APPENDIX-IV of these Regulations."

9. The GoI/MoD New Delhi letter dated 29.09.2009 directs for implementation of Government decision on the recommendation of the Sixth Central Pay Commission regarding revised provision regulating Pensionary Awards for the Armed Forces Officer/PBOR on voluntary discharge on or after 01.01.2006 :-

"
No. 16(5)/2008/D(pen/Policy)
Government of India
Ministry of Defence
Deptt. Of Ex-Servicemen Welfare
New Delhi, 29th Sept. 2009

To

*The Chief of the Army Staff,
The Chief of the Naval Staff,
The Chief of the Air Staff,*

Subject :- *Implementation of Government decision on the recommendations of the Sixth Central Pay Commission-Revision of provisions regulating Pensionary Awards relating to disability pension/war injury pension etc for the Armed Forces Officers and Personnel Below Officer Rank (PBOR) on voluntary retirement/discharge on own request on or after 01.01.2006.*

Sir,

The undersigned is directed to refer to Note below Para 8 of this Ministry's letter no. 1(2)/97/D(Pen-C) dated 31.01.2001, wherein it has been provided that Armed Forces personnel who retire voluntarily or seek discharge on request, shall not be eligible for any award on account of disability.

2. *In pursuance of Government decision on the recommendations of the Sixth Central Pay Commission vide Para 5.1.69 of their Report, President is pleased to decide that Armed Forces personnel who are retained in service despite disability, which is accepted as attributable to or aggravated by Military Service and have foregone lump-sum compensation in lieu of that disability, may be given disability element/war*

injury element at the time of their retirement/discharge whether voluntary or otherwise in addition to Retiring/Service Pension or Retiring/Service Gratuity.

3. *The provisions of this letter shall apply to the Armed Forces personnel who are retired/discharged from service on or after 01.01.2006.*

4. *Pension Regulations for the three services will be amended in due course.*

5. *This issues with the concurrence of Ministry of Defence (Fin) vide their U.O.No. 3545/Fin/Pen) dated 29.09.2009.*

6. *Hindi version will follow.*

Yours faithfully,

(Harbans Singh)
Director(Pen/Policy)"

10. Further, 04588/MS : Policy dated 22.11.2001, prescribes as follows:-

"Tele: 3018826

*Military Secretary's Branch
Army Headquarters.
DHQ PO, New Delhi-110011*

04588/MS: Policy

22 Nov 2001

*Headquarters
Southern Command
Eastern Command
Western Command
Central Command
Northern Command
ARTRAC*

**PREMATURE RETIREMENT AND RESIGNATION FROM
SERVICE IN RESPECT OF ARMY OFFICERS
(EXCLUDING AMC, ADC AND MNS)**

Introduction

1. These instructions are issued subsequent to delegation of premature retirement (PR) sanctioning authority from the

Ministry of Defence to the Military Secretary at Army Headquarters for officers upto the rank of Brigadier.

Eligibility and Exceptions

2. An officer who desires to retire prematurely or resign his commission before he becomes eligible for retirement on attaining the prescribed age of superannuation may apply for PR/resignation as per instructions contained in the letter.

Exceptions

3. These orders are not applicable, in the following cases:

- (a) AMC, ADC and MNS officers*
- (b) Officers who are compulsorily retired/resign from service.*
- (c) Retirement/resignations on spouse failing to acquire Indian citizenship as per AO 93/77.*
- (d) Release of Short Service Commissioned Officers during extension.*

Approving Authority

4. Military Secretary is the competent authority to accept a request for PR in respect of officers upto the rank of Brigadier, as per the delegation of powers made vide Ministry of Defence letter No. 19(11)2001-D(MS) dated 14 Aug 2001. As regards General Officers, Central Govt is the Sole authority to accept a request for PR/resignation. Each case will be considered on merit.

Essential Conditions

5. Conditional requests for PR/resignation which are coupled with postings, reconsideration of punishments, expunction of adverse remarks in annual confidential reports etc will not be entertained. The aggrieved officers may be advised to take up such issues separately and submit applications for PR/resignation only when they feel fully satisfied and finally decide to leave the service unconditionally. Application for PR/resignation. Application for PR/resignation from officers whose Statutory/Non-statutory complaints are pending will be considered only after decision on the complaint(s) is communicated and the officer decides to leave the service unconditionally. However, the concerned officer, if he so desires, may withdraw his complaint under intimation to all concerned before submitting his application for PR/resignation.

6. Applications from officers who are involved in any disciplinary case or inquiry, judicial or quasi-judicial proceedings, will not be forwarded to this HQ until the case against them is finalized. In case the officer gets involved in any such proceedings after forwarding his application, the

matter will be reported immediately to Army HQ, MS Branch, MS (PR) and AG's Branch/DV-2 by the fastest means.

7. PR applications initiated after issue of posting order will not be entertained. The officer may, however, apply for premature retirement after posting for PR.

(Admt: 04588/MS Policy dated 24 Jan 2002)

8. Definition. PR is applicable to only permanent commission officers who have rendered more than ten years or more of service and are eligible for gratuity or pension or both and who wish to retire prior to the date of superannuation.

9. Obligation.

(a) Officer retains his commission.

(b) Officers upto the rank of Lt Col are transferred to Regular Reserve of Officers (Class X) and remain liable to be recalled to Army Service within five years of being struck off strength or the age of superannuation in the present rank which ever is earlier.

10. Entitlements.

(a) An officer who is permitted to retire prematurely will be entitled to retiring pension and Death-Cum Retirement Gratuity at the appropriate rate, if he has at least 20 years reckonable service (period of study leave in the salary has been refunded, does not reckon as qualifying service for pensionary benefits) for pension and the service rendered by him has been satisfactory//Officers with less than 20 years but more than 10 years of service are not entitled to any pension, but unless otherwise withheld/forfeited under the orders of the Govt. they shall be granted retiring gratuity at the prescribed rates. There shall be no deduction in quantum of retiring gratuity so arrived, at in respect of officers who are permitted to retire prematurely on compassionate grounds/personal reasons. No gratuity will be payable if the qualifying service is less than 10 years

(b) Officers retiring prematurely are also entitled to encashment on accumulated annual leave vide Ministry of Defence letter No. F.14(3)/88/D/AG-B dated 26 Mar 92 and No. 14(2)/98/D(AG-IV) dated Mar 2001. They are, however, not entitled to any disability pension as laid down in Para 50 of the Pension Regulations for the Army 1961, Part-1.

(c) Any difficulty in interpretation of the orders regarding encashment of leave should be projected to AG's Branch (PS-2) at this HQ or CDA(O) Pune for clarification. Similarly advice regarding pension/gratuity entitlement should be obtained from AG's Branch (PS-4C) or CDA Allahabad.

Resignation

11. Definition. Resignation is applicable to an officer leaving the Army before he becomes eligible for pension/gratuity or when an officer seeks to resign voluntarily irrespective of the length of service by forfeiting the gratuity/pension.

12. Obligation. An officer who has resigned will neither have any reserve liability nor retain his commission after he is SOS from the Army.

13. Entitlements. No terminal benefits are permitted to those who resign the commission. However, leave encashment of accumulated leave is permitted.

Relieving of Officers on PR/Resignation.

14. Officers whose requests for PR have been accepted, should be relieved of their duties after recovering dues, if any, in consultation with CDA(O).

15. Normally 90 days time will be given to the retiring officers to complete retirement formalities. This 90 days period may be reduced to 30 days operational/administrative reasons,

16. In case a specific date of retirement has been laid down in the retirement order, either on officer's request to earn enhanced financial benefits or obligations, such dates will be adhered to."

11. We deem it necessary to refer to IHQ of MoD (Army) dated 25.02.2009 prescribing policy in respect of premature retirement and resignation of Army Officers (excluding AMC, ADC and MNS). The same is reproduced as under :-

"Tele: 23018826

**Integrated HQ of MoD (Army)
Military Secretary's Branch
New Delhi 110011**

04588/MS Policy

25 Feb 2009

Headquarter

**Southern Command (MS)
Eastern Command (MS)
Western Command (MS)
Central Command (MS)
Northern Command (MS)
ARTRAC (MS)**

South Western Command (MS)
IDS
ANC
SFC

**PREMATURE RETIREMENT AND RESIGNATION
POLICY IN RESPECT OF ARMY OFFICERS
(EXCLUDING AMC, ADC AND MNS)**

1. Reference MS Policy letter No 04588/MS Policy dated 22 Nov 2001.

2. These instructions are being issued as a comprehensive revised policy on premature retirement (PR)/resignation. Policy issued vide MS Branch letter quoted at Para 1 above and subsequent communications on the subject stand superseded.

Eligibility and Exceptions

3. An officer who desires to retire prematurely or resign his commission before he becomes eligible for retirement on attaining the prescribed age of superannuation may apply for PR/resignation as per instructions contained in this letter.

4. **Exceptions.**

These orders are not applicable, to the following cases:

- (a) AMC, ADC and MNS Officers.
- (b) Officers who are compulsorily retired/resigned from service.
- (c) Retirements/resignations on spouse falling to acquire Indian citizenship as per AO 14/2004.
- (d) Release of Short Service Commissioned Officers during extension.

Approving Authority

5. The approving authority for PR for Brigadiers and below is Military Secretary and for resignations the authority has been vested with the COAS. The approving authority for General officers is the Govt of India.

Premature Retirement (PR)

6. **Definition.**

PR is applicable to only Permanent Commissioned officers who have rendered ten years or more of service and are eligible for gratuity or pension or both and who wish to retire prior to the date of superannuation.

7. **Obligation.**

- (a) Officer retains his commission.

(b) Officers upto the rank of Lt Col are transferred to. Regular Reserve of Officers (Class X) and remain liable to be, recalled to Army Service within five years of being struck off strength or the age of superannuation in the present rank which ever is earlier.

8. Entitlements.

(a) An officer who is entitled to retire prematurely will be entitled to retiring pension and Death-Cum-Retirement Gratuity. Officers with less than 20 years but more than 10 years of service are not entitled to any pension but they shall be granted retiring gratuity at the prescribed rates.

(b) Officers retiring prematurely are also entitled to encashment of accumulated annual leave. They are, however, not entitled to any disability pension.

Resignation

9. Definition. *Resignation is applicable to an officer leaving the Army before he becomes eligible for pension/gratuity or when an officer seeks to resign voluntarily irrespective of the length of service by forfeiting the gratuity/pension.*

10 Obligation. *An officer who has resigned will neither have any reserve liability nor retain his commission after he is SOS from the Army.*

11. Entitlements. *No terminal benefits are permitted to those who resign their commission. However, leave encashment of accumulated leave is permitted.*

12. xxxxxxxxxxx

13. xxxxxxxxxxx

14. xxxxxxxxxxx

15. xxxxxxxxxxx

16. xxxxxxxxx

17. xxxxxxxxx

18. xxxxxxxxx

19. xxxxxxxxxxx

20. xxxxxxxxxxx

21. xxxxxxxxxxx

22. xxxxxxxx

23. xxxxxxxx

24. xxxxxxxx

25. xxxxxxxx

26. xxxxxxxx

27. xxxxxxxx

28. xxxxxxxx

Withdrawal of Application

29. Decision of competent authority on a request for PR/resignation is final and a request for withdrawal will not be entertained. However, if an officer, whose application for PR/resignation from the Army has been accepted, wishes to withdraw his application due to changed circumstances, he may apply to IHQ of MoD (Army), MS Branch, at least 30 days prior to his date of PR, duly recommended by the Cdrs in chain ie IO, RO and SRO and his request will be decided on merit. Requests for withdrawal of PR/resignation application, and cancellation of order for PR/resignation will be submitted alongwith the undertaking at Appendix B to this letter.

30. Contents of this letter may be disseminated down to unit level."

12. A perusal of the ibid Regulation and Policy, makes it clear that in a case of 'Resignation', the officer who seeks to resign voluntarily irrespective of the length of service will not be eligible for pension/gratuity.

13. In the instant case, the applicant while seeking permission to resign his commission vide application letter dated 01.08.2018 has certified to have understood the implications and obligations in Section IV of his resignation that (a) he has read Army HQ Letter no. 04588/MS : Policy

dated 25.02.2009 and understood the implications of and obligations/entitlements on seeking permission to resign his commission and (b) the application was submitted after consideration of all the factors involved and that he will not herein after withdraw his request.

Relevant part of applicant's resignation is produced as under :-

“

SECTION-II

(Request of the officer indicating specific reasons)

1. *I, IC 71476W, Maj Sahil Malhan was commissioned into ASC in the year 2009.*
2. *The onset of my medical problem dates back to 2013 when on 01 April 13, while I was doing YO's course in ASC Centre and College Bangalore fell from a galloping horse while doing obstacle course in equitation class from a considerable height with my back hitting the hard rock-strewn ground. As a result of this extremely bad fall, I suffered a Fracture Transverse Process L1-L3 that was diagnosed by the neurosurgeon in the Comd Hospital, Bangalore. I was sent on a sick leave of 8 weeks during which I was on total bed rest. This resulted in me having to leave the YO's course even after completion of 2/3rd of the tenure.*
3. *I had my following reviews by the Neurosurgeon in CH Chandimandir by virtue of my posting in Patiala. Once my P3(T-24) category was over, the neurosurgeon was going to put me in P3(P) category, but I requested him not to do so as I held high aspirations in my service tenure and had not even finished my YO's as yet, and that a P3(P) category would not enable me to do any course and move higher up in the ranks was eventually placed in Permanent Low Medical Category (S1H1A1P2E1) for Fracture Transverse Process L1-L3 wef 23 Nov 13 (Refer Opinion of Specialist copy att as Annexure 'T')*
4. *Since then I have been admitted to various service as well as civil hospitals time and again for the treatment as the chronic underlying pain that is a nagging annoyance not only persisted but grew tremendously in intensity, causing occasional episodes of intense muscle pain from time to time. Doing this also took a toll on my overall health as (started*

being in a lot of stress because of the ongoing problem. The doctors would take my complete medical history and perform several physical exams including X ray, MRI scan and CT scan to determine the source of the pain and also for muscle weakness and numbness as the spinal condition turned into a degenerative disc disease after the initial injury causing the breakdown of the intervertebral disc. The abnormality was confirmed by MRI and doctors came out with the explanation of increasingly developing tears in the annulus as the nucleus pulposus started coming out through tears in the wall and touching the nerves, causing pain by making the nerves inflame. The tears also affected the nerves in the annulus, and small movements started causing discogenic pain.

5. *A Due to the prolonged iness and chronic pain, my entire vertebral column is affected and increasingly I find myself unable to perform day to day activities such as merely sitting/standing for short duration of half to one hour and travelling any distance by road etc as sitting causes me even more pain because of the discs having more weight on them in this position, and activities such as bending or twisting make the pain worse. On such instances, the only option left with me is to find a place to lie down which tends to relieve the pain for that period of time. But this is not always possible. In fact during the duty hours, it is not possible at all. The condition during cold climatic conditions gets even worse.*

6. *Since the injury, I am on a regular medication which includes steroids in tapering dosages of 5 day periods and also in the form of epidural steroidal injections when the pain becomes unbearable. This medication also includes anti-inflammatory drugs. I am also undergoing neurosurgical treatment, physiotherapy and hydrotherapy.*

Present Status

7. *I have suffered from this medical problem at an early age/service and has been certified by the Army medical authorities that my condition is attributable to military service (Ref para 17 of AFMSF-15 dt 23 Nov 2013 & 25 Jan 2016 copy att as Annexure 'II')*

8. *Continuation in services is aggravating my problem further beyond treatment because of which I foresee stagnation in my career progression. The helplessness due to excessive pain and worries about my future in the services has started affecting my mental health as well. I have already*

suffered episodes of depressive disorders in the past due to the reasons cited in my application and once again I am finding myself getting into a phase of mental trauma. The unbearably excruciating pain has left no way ahead for me in life. Though I try to work for the organization to the best of my ability. I have been unable to do the same as my medical condition is the limiting factor has also led to situations where I have not been able to perform duties that might seem normal routine This has resulted in embarrassment and frustration leading to depression and lowered self-esteem as my present medical condition prevents me from giving my best to the organization. I feel like a burden on the organization rather than an asset which I always endeavored to be Under the present stressful circumstances am submissively struggling to find a way ahead in life.

9. In view of the above, it is my sincere request that my worsening circumstances be comprehended and I may please be allowed an opportunity to seek an alternative career which would allow me personal and professional growth without aggravating my medical condition and that my request for premature resignation from service may please be accepted.

Section-III

(To be filled in by officers seeking premature retirement only)

*(*Delete certificate not applicable.)*

Not Applicable

Section -IV

(To be filled in by the officers seeking permission to resign their commission only.)

1. I, Personal No. IC-71476W Rank Maj Name Sahil Malhan

Certify that :-

(a) I have read Army HQ letter No. 04588/MS Policy dt 25 Feb 2009 and understand the implications of and obligation/entitlements on seeking permission to resign my Commission.

(b) I have submitted this application after consideration of all the factors involved and will not herein after withdraw my request.

(c) I have not attended any course involving obligatory period of service during the last five years.

(d) In the event of my request being accepted I will refund the proportionate cost of training for the unserved period to the treasury payable to the CDA(O) in one lump sum before I am relieved of my duties.

(e) I have not availed study leave during the last three years.

(f) My conduct is not presently under investigation by any authority no inquiry is either pending or envisaged against me.

(g) I have not drawn any advance for purchase of motor conveyance, outright purchase of house or house building etc.

(h) I owe the Government the following amount which I undertake to credit into the treasury before I am relieved of my duties :-

	<u>Advance</u>	<u>Interest</u>	<u>Total</u>
<i>(i) Advances for house building/ outright purchase of house</i>	NA	NA	NA
<i>(ii) Purchase of motor conveyance</i>	NA	NA	NA
<i>(iii) Any other advance</i>	NA	NA	NA
<i>(iv) Proportionate cost of training</i>	NA	NA	NA"

14. In the case of ***Senior Divisional Manager, LIC vs. Shree Lal Meena I*** (2015) 17 SCC 43, the Hon'ble Supreme Court was called upon to determine whether the respondents 'resignation' amounted to a forfeiture of his past service disentitling him from pension or was in fact 'voluntary retirement'. Justice Dipak Mishra (as the learned Chief Justice

then was) speaking for a two judge Bench of this Court in *Shree Lal Meena I* observed :

“28..... Needless to say, resignation has the effect of termination of an employee. Voluntary retirement though has the effect of termination of an employee yet it has different consequences. In the former case, the ex-employee could not be entitled to pension, whereas in case of voluntary retirement, the latter one, the employee would be entitled to pension depending upon the terms postulated in the regulations or rules or the scheme. Rule 23 of the 1995 Rules specifically provides that on resignation, dismissal, removal, termination or compulsory retirement, the employee shall forfeit past service and he shall not qualify for pensionary benefit. Thus resignation given under the 1995 Rules would not entitle an employee to get pension.

29..... In Asger Ibahim Amin, retrospectivity has been give to Rule 31 {Pension on voluntary retirement} and for the said purpose the amendment to the 1960 Regulations, specifically Regulation 19(2-A) has been taken recourse to. In our view, when Rule 31 covers the field of voluntary retirement and does not make it retrospective, there being a real difference between resignation and retirement, it is not seemly to read the amended Regulations to the Rules to make the same retrospective. Therefore, we are unable to concur with the view expressed in Asger Ibahim Amin.”

The Court noted that there is a “real difference between resignation and retirement”. They cannot be used interchangeably, and the Court cannot substitute one for the other merely because the employee has completed the requisite number of years to qualify for voluntary retirement.

15. In *Shree Lal Meena II* (2019) 4 SCC 479, the Hon’ble Supreme Court elucidated the distinction between resignation and voluntary retirement in the following terms :

22..... [quoting *RBI v Cecil Dennis Solomon* (2004) 9 SCC 461]. In service Jurisprudence, the expressions "superannuation", "voluntary retirement", "compulsory retirement" and "resignation" convey different connotations. Voluntary retirement and resignation involve voluntary acts on the part of the employee to leave service, Though both involve voluntary acts, they operate differently. One of the basic distinctions is that in case of resignation it can be tendered at any time, but in the case of voluntary retirement, it can only be sought for after rendering the prescribed period of qualifying service, Another fundamental distinction is that in case of the former, normally retiral benefits are, denied but in case of the latter, the same is not denied. In case of the former, permission or notice is not mandated, while in the case of the latter, permission of the employer concerned is a requisite condition. Though resignation is a bilateral concept. and becomes effective on acceptance by the competent authority, yet the general rule can be displaced by express provisions to the contrary."

The above observations highlighted the material distinction between the concept of resignation and voluntary retirement. The Court also observed that while pension schemes do form beneficial legislation in a delegated form, a beneficial construction cannot run contrary to the express terms of the provisions:

"26, There are some observations on the principles of public sectors being model employers and provisions: of pension being beneficial legislations (see Asger ibrahim Amin v LIC). We may, however, note that as per what we have opined aforesaid, the issue cannot be dealt with on a charity principle. When the legislature, In its wisdom, brings forth certain beneficial provisions in the form of Pension Regulations from a particular date and on particular terms and conditions, aspects which are excluded cannot be Included in it by implication."

Further, in Para 12, 13, 14 and 15 the Hon'ble Supreme Court has held :-

12. *In the present case, the first respondent resigned on 7 July 1990 with effect from 10 July 1990. By resigning, the first respondent submitted himself to the legal consequences that flow from a resignation under the provisions applicable to his service. Rule 26 of the Central Civil Service Pension Rules 1972 states that:*

“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 a forfeiture of past service...”

Rule 26 states that upon resignation, an employee forfeits past service. We have noted above that the approach adopted by the court in Asger Ibrahim Amin has been held to be erroneous since it removes the important distinction between resignation and voluntary retirement. Irrespective of whether the first respondent had completed the requisite years of service to apply for voluntary retirement, his was a decision to resign and not a decision to seek voluntary retirement. If this court were to re-classify his resignation as a case of voluntary retirement, this would obfuscate the distinction between the concepts of resignation and voluntary retirement and render the operation of Rule 26 nugatory. Such an approach cannot be adopted. Accordingly, the finding of the Single Judge that the first respondent 'voluntarily retired' is set aside.

13. *We now turn to the question of whether the first respondent had completed twenty years in service. During the present proceedings, our attention was drawn to the fact that the first respondent had applied for voluntary retirement on 14 February 1990. By a letter dated 25 May 1990 the appellant denied the first respondent's application for voluntary retirement on the ground that the first respondent had not completed twenty years of service. It was thus urged that the appellant's decision to deny the first respondent voluntary retirement was illegal as the first respondent had completed twenty years of service.*

14. *This argument cannot be accepted. Even If he was denied voluntary retirement on 25 May 1990, the first respondent did not challenge this decision but resigned, on 7 July 1990. The denial of voluntary retirement does not mitigate the legal consequences that flow from resignation. No evidence has been placed on the record to show that the first*

respondent took issue with the denial of voluntary retirement between 25 May 1990 and 7 July 1990. To the contrary, in the legal notice dated 1 December 1992 sent by the first respondent to the appellant, the first respondent admitted to having resigned. The first respondent's writ petition was instituted thirteen years after the denial of voluntary retirement and eventual resignation. In the light of these circumstances, the denial of voluntary retirement cannot be invoked before this Court to claim pensionary benefits when the first respondent has admittedly resigned.

15. On the issue of whether the first respondent has served twenty years, we are of the opinion that the question is of no legal consequence to the present dispute. Even if the first respondent had served twenty years, under Rule 25 of the CCS Pension Rules his past service stands forfeited upon resignation. The first respondent is therefore not entitled to pensionary benefits."

16. In the instant case, the applicant resigned on 20.08.2019. By resigning, the applicant submitted himself to the legal consequence that flow from resignation under the provision applicable to his service. Hence, in view of the Pension Regulation 2008 (Part-I), Policy letters and law laid down by the Hon'ble Supreme Court in *Shree Lal Meena II (Supra)*, the applicant is not entitled to any relief.

This OA is devoid of any merits and accordingly, dismissed.

Pronounced in the Open Court on the ^{22nd}..... day of July, 2025.


[RASIKA CHAUBE]
MEMBER (A)


[JUSTICE NANDITA DUBEY]
MEMBER (J)

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