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**(2012) 12 RAJ CK 0032**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 11382 of 2012**

Durga Prasad

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision :** 11-12-2012

**Acts Referred:**

**Citation :** (2013) 1 CDR 1

**Hon'ble Judges :** Gopal Krishan Vyas, J

**Bench :** Single Bench

**Advocate :** Prem Dayal Bohra, for the Appellant; Kamal Dave, for the Respondent

**Final Decision :** Allowed

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## Judgement

Gopal Krishan Vyas, J.—In this writ petition, following prayer is made by the petitioner:--

A. By an appropriate writ, order or direction, the transfer order dt. 6.10.2012 (ANNEXURE-3) passed by the respondent may kindly be quashed and set aside.

B. By an appropriate writ, order or direction, the respondents may kindly be directed, not to enforce transfer order dt. 6.10.2012 (Annexure-3) bearing passed by the respondent no. 2.

C. Any other appropriate writ, order or direction which this Hon''ble Court may deem just and proper in the facts and circumstances of the case may kindly be passed in favour of the petitioner.

D. Writ petition filed by the petitioners may kindly be allowed with costs.

The main contention of the petitioner is that due to unavoidable circumstances, the petitioner filed application for voluntary retirement but without passing any order upon the prayer of the petitioner impugned transfer order has been passed which is totally illegal.

2. On 25.10.2012 while issuing notice to the respondent's effect and operation of order impugned dt. 06.10.2012 was stayed and petitioner was allowed to join the duty at the place where he was working. Further, a liberty was granted to the respondents for deciding application of the petitioner seeking voluntary retirement.

3. Learned counsel for the petitioner submits that inspite of the above order the respondents refused to accept the application for voluntary retirement. The petitioner is seeking voluntary retirement but for illegal reason the respondents denied the acceptance of voluntary retirement which is totally illegal. Learned counsel for the petitioner stated at Bar that at present there is no pendency of departmental inquiry against the petitioner, therefore, the respondents are under obligation to accept the prayer of the petitioner for voluntary retirement but, contrary to the prayer made by the petitioner, the transfer order has been issued, therefore, the order impugned may be quashed.

4. Per contra, learned counsel appearing for the respondents vehemently argued that in this case the order of transfer is under challenge, therefore, no prayer for voluntary retirement can be made by the petitioner. Further, it is submitted that two penalties were inflicted against the petitioner; therefore, during currency of those penalties the prayer of the petitioner cannot be accepted. Therefore, the application filed by the petitioner for voluntary retirement has been rejected on 02.11.2012, in which, there is no illegality, so also, transfer is an incidence of service, hence, this writ petition may be dismissed because being employee it is the duty of the petitioner to work at the place where his services are required.

5. After hearing learned counsel for the parties, I have perused, the order of transfer dt. 06.10.2012, so also, order dt. 02.11.2012 passed during the pendency of this writ petition to reject the prayer of the petitioner for voluntary retirement. In my opinion, transfer is an incidence of service and normally this Court would not interfere in the order of transfer. But, here in this case, the ground is raised by the petitioner in this writ petition that application for voluntary retirement is under consideration and, inspite of the said fact, the respondents, issued transfer order which is totally illegal.

6. In my opinion, the respondents are unnecessarily refusing the prayer of the petitioner for voluntary retirement. In the order dt. 02.11.2012 passed during the pendency of this writ petition after granting liberty by this Court it is observed that two punishments are imposed against the petitioner in the year 2012 and before execution of those punishments voluntary retirement cannot be accepted. In the opinion of this Court, there is complete fallacy in the plea advanced by the respondents because out of two penalties, first is withholding two grade increments without cumulative effect and, the other penalty is with regard to stoppage of the facility of Pass/PTO for the year 2012-2013. Both the above punishments may be implemented even after acceptance of the request of the petitioner for voluntary retirement; and, if the voluntary retirement application of the petitioner will be accepted forthwith, then, obviously the

penalty of withholding of two grade increments without cumulative effect will also come to an end because the petitioner will not remain in service, therefore, there is no question of granting any future increment. Therefore, the ground taken by the respondents in the impugned order dt. 02.11.2012 is not sustainable in law. In view of above, this writ petition is allowed. Impugned order of transfer dt. 06.10.2012 is quashed and set aside with further direction to the respondents to pass an order for acceptance of voluntary retirement with effect from 31.12.2012 and grant him all consequential benefits within three months from the date of acceptance of voluntary retirement. It is made clear that although certain reasons and allegations are mentioned in the application for voluntary retirement but those reasons and allegations shall be ignored for the purpose of acceptance of the prayer of voluntary retirement. It is expected from the respondent authorities that they will not practice revengeful attitude against the petitioner and act fatherly.