
(1985) 06 AP CK 0010
In the Andhra Pradesh High Court
Case No : W.A. No. 10 of 1985

N. Ranga Rao

APPELLANT

Vs

Government of India

RESPONDENT

Date of Decision : 26-06-1985

Acts Referred:

Army Act, 1950 — Section 10, 18, 19, 191, 192
Army Rules, 1954 — Rule 16
Constitution of India, 1950 — Article 161(1), 161(2), 162, 166(3), 226
Defence Services Regulations — Regulation 103
Evidence Act, 1872 — Section 114
Government of India Act, 1935 — Section 49, 75
Penal Code, 1860 (IPC) — Section 302

Citation : (1987) 1 APLJ 131 : (1986) 2 LLJ 1

Hon'ble Judges : K. Ramaswamy, J;K. Jayachandra Reddy, J

Bench : Division Bench

Judgement

K. Ramaswamy, J.—"To be" or "not to be" was the question with which like Hamlet, the appellant was confronted with and in the conflagration thereof he opted to relinquish his office as Major in Army EME to assuage from domestic tribulations and sent letter dated 29th October, 1982 for voluntary retirement. Though he retraced the step after reflection he is landed in legal tangle and knocked the door of this Court under Art. 226 of the Constitution to extricate therefrom. For the elaboration thereof, it is necessary to delineate in a nutshell the undisputed facts : While having Bachelor's course of Engineering and N.C.C., the appellant had the short service commission on 22nd February, 1965 and in a short span scaled over to higher echelons of service in quick succession, as a Major and was discharging his duties in the Military College of Electrical and Mechanical Engineering at Secunderabad. He has exhibited undaunted exemplary valour on war front in 1971 and devotion to duty unmindful of consequences to his person and brought two abandoned enemy tanks after due repair and earned unquestioned reputation to be an Officer of efficiency, integrity and relentless devotion to duty, in fairness to the respondents, they accepted this as a fact at

more than one place in the note file. In August 1982, he was transferred from Secunderabad and was posted at Assam. At that juncture he was baffled with domestic tribulations to look after all his ailing dependents, etc. and he was in a fix and even was prepared to forego sixteen years benefit of service and opted to lay down the office in peace time military service and submitted an application dated 29th October, 1982. In the interregnum he was screened by a Selection Board in December 1982 for promotion as Asst. Lt. Colonel and selected him. Having had reflections and got mitigated domestic problems, he submitted his application dated 27th May, 1983 through proper channel withdrawing his letter dated 29th October, 1982. But a day interluded i.e., 28th May, 1983, the Army Headquarters communicated an order accepting his request for premature retirement and it was served on the appellant on 2nd July, 1983. On receipt of the letter dated 27th May, 1983, the Army Headquarters suo motu kept in abeyance the operation of the letter dated 28th May, 1983 accepting his request to voluntarily retire, and he was allowed to continue in uninterrupted service. His request withdrawing the application for premature retirement was rejected by order dated 19th October, 1983, and was communicated resulting in his filing the writ petition. This Court suspended the operation of the order dated 28th May, 1983 (accepting his request for premature retirement) and the appellant has been continuing in service. At final hearing the writ petition was dismissed and hence this appeal.

2. Mr. Chandrasekhara Rao, his learned counsel though raised several contentions before the learned single Judge, has pressed two contentions for out considerations, viz. (1) that the Defence Minister is responsible to pass orders. The Minister of State was authorised for the first time by the Defence Minister by Office order No. 51 dated 16th August, 1984, to dispose of the files relating to premature retirement of the armed service. The order accepting his premature retirement was made by the State Minister on 28th May, 1983 by which date he was not invested with authority to accept it. Therefore, the impugned order is devoid of jurisdiction and hence a nullity. The next contention is that before the appellant was relieved of his duty, he had already submitted his application dated 27th May, 1983 i.e., before accepting his request for retirement by withdrawing his application and he has an unbridled right to do so. The respondents are bound to accept the same and should cancel the order dated 28th May, 1983. The rejection order was served on 22nd October, 1983 till which date he was not relieved from the duty. The order accepting voluntary retirement becomes effective only from the date of relief under Regn. 103(d) of the Defence Service Regulations, 1962 (for short, "the Regulation"). Since the appellant was not relieved of his duties by the date on which he submitted his application i.e., 27th May, 1983, withdrawing his request for premature retirement, the rejection thereof (i.e., 19th October, 1983) is therefore per se illegal. He relied on *Bachhittar Singh Vs. The State of Punjab*, ; *State of Punjab Vs. Amar Singh Harika*, and *Oriental Fire and General Insurance Co. Ltd. Vs. Mrs. Kamal Kamini Das and Others*, . The above contentions were strenuously resisted by the

respondents and was elaborated by their standing counsel, Sri Nagaraja Rao. It is contended that under the business rules the competent authority is the Minister concerned and in this case the Defence Minister authorised State Minister to dispose of the files relating to premature retirement. Even oral instructions by the Defence Minister under the business rules are sufficient. Therefore, the State Minister is fully competent to pass orders on the application for premature retirement. This Court cannot interfere with such an order in exercise of the power under Art. 226 of the Constitution. Though the appellant has unilateral right to withdraw his request for premature retirement before acceptance and the authorities are bound to accept the same, but that position stands altered into one of discretion after it was accepted. In this case, his application withdrawing the request for premature retirement was received after the acceptance of his request and hence the authorities are not bound to consider that request, yet, for valid reasons it was rejected. Therefore, the appellant does not have any valid jurisdiction to assail its correctness.

3. The diverse contentions claim adjudication of two important questions of law viz; (1) Whether the Minister of State was competent and has jurisdiction to accept the request for voluntary retirement; and (2) When the acceptance of such request becomes effective ? and whether it is obligatory for the authorities to accept his request for withdrawal of premature retirement. Under Art. 53(1) of the Constitution, the executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with the Constitution. Art. 73(1) empowers the President to exercise the executive power of the Union, subject to the provisions of the Constitution to the matters with respect to which the Parliament has power to make laws under Art. 74(1) of the Constitution, his functions under the Constitution shall be exercisable with the aid and advice of the Council of Ministers with the Prime Minister at the head appointed by him in the manner prescribed under Art. 75. The executive powers are vested in the Ministers of the Cabinet and their actions shall be expressed to be taken in the name of the President (Art. 77(1)). The President under Art. 77(3) shall make rules for the more convenient transaction of the business of the Government of India and for the allocation among Minister of the said business.

4. In *Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab*, Mukherjea, J. (as he then was) speaking for the Court held that the language of Art. 162 clearly indicates that the power of the State executive do extend to the matters upon which a State Legislature is competent and are not confined to matters over which Legislation has been passed already. The same principle underlies under Art. 73 of the Constitution. Item 2 of the Union List (List I) pertains to Navy, Military and Air Force and any other armed forces of the Union and thereby empowers the Union to deal with the subject in issue. The appointing authority of the appellant is the President of India by operation of S. 10 of the Army Act 1950 (46 of 1950), for short, "The Act". Therefore, we hold that executive action of the Union of India extends to all matters over which it

has legislative competence to make law and it is not confined to cases in which there is already law occupying the field and the President of India is competent to pass the impugned order.

5. Though the Counsel on either side cited decisions of the Supreme Court and other High Courts dealing with Art. 166(3), contending that the ratio therein would govern the exercise of the powers by the President under Art. 77(3), it is no longer *res integra* and the need to refer to them in extenso is obviated by the ratio decided by a Bench of Seven Judges of the Supreme Court in *Samsher Singh Vs. State of Punjab and Another*, and *A. Sanjeevi Naidu, etc. Vs. State of Madras and Another*, by a Constitution Bench. The conclusions that could be drawn from the ratio therein are that the Constitution embodies generally the Parliamentary or Cabinet form of Government of the British model and the President must act with the aid and advice of the Council of Ministers except where the contrary provision is made by the Constitution. The satisfaction of the President required by the Constitution is not the personal satisfaction of the President but is the satisfaction of the President in the constitutional sense under the Cabinet system of Government. It is the satisfaction of the Council of Ministers on whose aid and advice the President generally exercises all his powers and functions. The rules of business and allocation of business among the Ministers are relatable to the provisions contained in Art. 53 and the provisions made in Art. 74 for a Council of Ministers to aid and advise the President are sources of the rules of business.

6. The Prime Minister allocates the business to various Ministers. The Cabinet is responsible to the Parliament for every action taken in any of the ministries. That is the essence of joint responsibility. That does not mean that each and every decision must be taken by the Cabinet. The political responsibility of the Council of Ministers does not and cannot predicate the personal responsibility of the Ministers to discharge all or any of the Governmental functions. Similarly an individual Minister is responsible to the Parliament for every action taken or omitted to be taken in his ministry.

7. The business rules have been made under Art. 77(3) only for the more convenient transaction of the business of the Government. The constitutional validity thereof has been upheld by the Supreme Court in *Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another*, . Therein at Para 26, Subba Rao, J. (as he then was) held that the executive power of the State vests in the Governor; it is exercised by him directly or by officers subordinate to him in accordance with the provisions of the Constitution; the Ministers headed by the Chief Minister advise him in the exercise of his functions; the Governor made rules enabling the Minister in charge of particular department to dispose of cases before him and also authorising him by means of standing orders, to give such directions as he thinks fit for the disposal of the cases in the department. In *Samsher Singh's* case (*supra*) Ray, C.J., held that the presumption of constitutionality was also to be

implied under the rules of business. The presumption, of course, could be rebuttable.

8. The exercise of the power and the discharge of the duties by a Minister concerned is as per the business rules made under Art. 77(3) of the Constitution. It is his political responsibility. He acts as a Subordinate Officer of the President responsible to the Parliament. He acts on behalf of the Government as its limb but not as a delegate. The theory of delegation is foreign to the Cabinet form of Government. He can lay down the policy and authorise various officers employed in his department to discharge those functions or decisions as limbs of the Government. There is in law no delegation to those officials. To bear with repetition Sri Chandrasekhara Rao's contention is that the State Minister is not part of the Cabinet and the Cabinet Minister in-charge of the defence alone is responsible for the decisions taken and duties performed of his ministry. He did not issue orders expressly authorising the State Minister to dispose of the files pertaining to premature retirement at the relevant time. Therefore, the Minister for State is incompetent and the impugned order is thereby devoid of jurisdiction and is null and void. The question, therefore, in the light of the above legal position is, whether there should be an express authorisation to the State Minister by the Cabinet Minister to dispose of the files concerning the premature retirement of the defence personnel. Rule 4 of the Government of India (Allocation of Business) Rules 1961 deals with allocation of departments among ministers. Sub-rule (1) of R. 4 is not relevant. (Hence omitted). Sub-rule (2) thereof posits that the President may, on the advice of the Prime Minister, allocate the business of the Government of India among Ministers by assigning one or more departments to the charge of a Minister. Sub-rule (3) adumbrates that notwithstanding anything contained in sub-rule (1) or sub-rule (2) the President may, on the advice of the Prime Minister -

"(a) "associate" in relation to the business allotted to a Minister under either of the said sub-rules, "another Minister" or Deputy Minister to perform such functions as may be assigned to him." sub-rule (b) is not relevant. Hence omitted.

9. Sri H. C. Arora, Deputy Secretary to the Government of India, Military Secretariat in the Ministry of Defence filed counter-affidavit on behalf of the respondents, dated 24th April, 1985, stating that Sri K. P. Singh Deo relinquished the office of the Deputy Minister and assumed the office of the Minister of State in the Ministry of Defence, with effect from the afternoon of 29th January, 1983 (vide Proceedings No. 55/1/1/83, Cab. dated 29th January, 1983 in Item (a)(x). In that capacity he was addressed as Raksha Rajya Mantri. The list of business for the Ministry of Defence is given as per allocation of the business rules as amended from time to time. Item No. 2 thereof relates to the Armed Forces of the Union, viz., Army, Navy and Air Force. Item No. 33 relates to the Department of Research and Development Council and Item No. 34 pertains to all matters relating to the scientific and technical personnel under the control of the

department. He further stated that the matters relating to the armed forces of the Union, viz., Army, Navy and Air Force were allocated by the Prime Minister to Sri K. P. Singh Deo, Honourable Minister for State and in that capacity he approved the impugned orders on 18th May, 1983 and 10th October, 1983 pertaining to the appellant and that Sri Singh Deo was duly authorised to deal with the said matters at the relevant period as the subject was dealt with by the Minister of State in the Ministry of Defence. It is corroborated by all the relevant proceedings filed as Annexures and we have no hesitation to accept the statement as correct. Even in the office order No. 51 dated 16th August, 1984, it is mentioned thus : "In Keeping with the practice being followed hereto" the case relating to the following shall continue to be dealt with by Raksha Rajya Mantri". A conjoint reading of the business rules, allocation of work and averments in the counter-affidavit would manifest that Sri Singh Deo, the Minister of State for Defence was allocated with the business of Defence Personnel. He was the associated Minister. He dealt with the files as Associated State Minister. There is no need for the Defence Minister to separately issue office orders allocating the work to the State Minister. What is thus latent was made patent by Office Order No. 51 dated 16th August, 1984 but its result is inconsequential. Section 114(c) of the Evidence Act permits to draw presumptive evidence that official acts have been regularly performed. In *Emperor v. Sibnath Benarji*, AIR 1954 PC 156, Lord Thankerton speaking for the Board, dealing with S. 75 of the Government of India Act, 1935 and the business rules made thereunder, held thus :

"This is a case typical of the application of the presumption, and if the respondent had wished to probe the matter, in case the consideration might have been by some one not qualified as an officer subordinate to the Governor within the terms of S. 49 of the Act of 1935, they should not have let the matter rest there, but proceed either by counter-affidavit or by cross-examination of Mr. Porer of his affidavit. As they did not take such a course, the presumption remains undisturbed."

In *Chinta Lingam and Others Vs. Government of India and Others*, Grover, J. speaking for the Court held that there is a presumption that the official acts have been regularly performed.

10. In *Ishwarlal Girdharlal Joshi etc. Vs. State of Gujarat and Another*, , Hidayatullah, J. (as he then was) speaking for the Court held in Para 6, that there is also presumption of regularity of official acts and that presumption covers both the issue of the order in the form contemplated under Arts. 166 (1) and (2) the business rule as well as the acts done. This was so held while considering the business rules framed by the Gujarat Governor in exercise of the power under Art. 166(3) of the Constitution.

11. In *The Agricultural Market Committee, Bapatla v. Tatavarthi Balakondarayudu Achuta Venkata Rao & Co.*, 1984 2 AnWR 417 one of us (K. Ramaswamy, J.) while considering the notification issued under the A.P. Agricultural Produce and Livestock and Markets Act, 1966, held that presumption can be drawn that the

notification was properly issued.

12. From the above discussion we have no hesitation to hold that Sri Singh Deo, the Minister of State for Defence was allocated of the business relating to voluntary retirement of the service personnel of the Defence as associate minister. He regularly performed his duties as such Minister and approved the letter of request of the appellant to permit him to voluntarily retire from service and rejection of the application for withdrawal. It must be presumed that he approved them in the usual course in the discharge of official functions in a proper way as State Minister and he is competent to deal with it and his order is perfectly within his jurisdiction. At this juncture it is necessary to dispose of the contention of Mr. Nagaraja Rao, learned Additional Standing Counsel that Minister is competent to give oral instructions, allocating the business and it cannot be assailed in the proceedings under Art. 226 of the Constitution. It merits no serious consideration. If this contention is given credence to it would be difficult to know what would be the nature of the instructions given, to whom were they given and when they withdrawn. All would remain in Vacuum. When the business rules contemplate of issue of instructions by means of standing orders, it must be done in that manner i.e., in writing and it must flourish or perish with the consequences flowing therefrom. It is equally difficult with all due respect to construe that the learned Judges of the Bombay High Court intended to lay down in Full Bench case in Chandrakant Sakharani and Others Vs. State of Maharashtra and Others, : in a wide proposition as contended for the respondents that no relief can be given under Art. 226 for violation of business rules. If it is of such an intention as contended for, with all due deference to the learned Judges, we are unable to share the same. In fact many a procedural infraction which go to the root of the jurisdiction and are palpably illegal resulting in injury or injustice to the affected party would be corrected in exercise of the power under Art. 226 of the Constitution and remedy given. In this view, to avoid undue burden on the judgment, the decision cited by either counsel, viz., The Registrar of Co-operative Societies, Trivandrum and Another Vs. K. Kunjabmu and Others, ; Shahdara (Delhi)-Saharanpur Light Railway Co. Ltd. etc. Vs. The District Magistrate, Meerut and Others, ; Fonseca Private Ltd. and Others Vs. L.C. Gupta and Others, ; Ishwarlal v. State of Gujarat (supra) and Arun Kumar Bhattacharjee and Others Vs. State of West Bengal and Others, , are unnecessary to consider in extenso but suffice it to state, they do not deal directly with the point in issue.

13. The crux of the questions that needs decision are when the acceptance of retirement at request becomes effective; if so at what point of time the appellant has a right to withdraw such an application ? For appreciation thereof, let us at the outset clear the factual base. As stated, the appellant admittedly acquired seniority as an officer from June, 1964 and at the relevant time was working as Major. He was cleared for promotion as Asst. Lt. Colonel in Dec. 1982, an application requesting to voluntarily retire from service which was approved by the Minister on 18th May, 1983. The Army Headquarters, New Delhi despatched

the same on 28th May, 1983. It was served on the appellant on 2nd July, 1983. In the interregnum, on 27th May, 1983 the appellant withdrew his application for voluntary retirement through proper channel. It was rejected on 19th October, 1983. He was signalled on the even date, to proceed on leave and rejection order was served on 22nd October, 1983 pursuant to which he was sent on leave from 7th November, 1983 and the writ petition was filed thereafter; got the impugned order suspended and is continuing in service. Though it is contended by the appellant that after his submitting application seeking voluntary retirement, he was not communicated with any direction to withdraw that application, the respondents, asserted that the appellant was asked for but he persisted to accept his request for voluntary retirement untrenched into this arena of disputed question of fact, we pass on to positive admitted facts. It is stated in the office file that the Army is short of Officers of Technical Cadre. The appellant has proven ability, discipline and gallantry. Military Secretary interviewed the appellant and he was satisfied with the genuineness of the family troubles the appellant had. The Military Headquarters and Secretariat recommended to accept his request to withdraw the application for voluntary retirement. Despite the acceptance of the request, the Army Headquarters suo motu kept the order dated 28th May, 1983 in abeyance till date of rejection dated 19th October, 1983. All the officers agreed for retention of the appellant in service except the solitary comment made by the Joint Secretary, viz., "the Officer is making convenience of army service and in the past permission has been withheld in such cases". It was agreed to by the Minister and that this stood in the way of the appellant.

14. With a view to ensure proper discharge of the duties by the members of the Armed Forces, etc., and the maintenance of discipline among them, Arts 33 and 35(a) of the Constitution empower the Parliament to make law to restrict the fundamental rights conferred on them by Part III thereof. "The Act" had its birth therefrom and the appellant was appointed under S. 10 of the Act. Section 191 in Chapter XV of the Act empowers the Central Government to make rules to carry into effect the provisions of the Act. Without prejudice thereto, Sub-s. (2) thereof empowers the Central Government to make rules for the removal, "retirement", release or discharge from the service of persons subject to the Act. Pursuant thereto the Army Rule 1954 (for short, "the Rules") are made and are amended from time to time and the latest amendment being dated 4th June, 1979 introducing one of the relevant rules viz., R. 16-B relating to retirement at request which reads thus :

"Retirement of an officer at his own request :-

(1) The retirement of an officer at his own request before he becomes liable to compulsory retirement under Rule (Illegible) shall require the sanction of the Central Government.

(2) An officer whose request to retire "is granted "may", before he is retired", apply to the Central Government for withdrawal of his request. The Central Government may, at its discretion, grant such withdrawal of his application.

15. Rule 16-A empowers the central Government to compulsorily retire from service of the officers mentioned therein by an order of the Central Government or the authorities specified in Sub-rule (2) thereof with effect from the afternoon of the last date of the month in which they attain the age limit specified in Sub-rule (5). Thus, R. 16B(1) gives right to an officer to seek voluntary retirement from service but the sanction of the Central Government is required. Sub-rule (2) thereof empowers the same officer obviously after locus poenitentiae to withdraw such an application before he is retired and discretion is given to the Central Government to deal with such an application.

16. Section 192 of the Act empowers the Government to make regulations for all or any of the purposes of the Act other than those specified in S. 191. In exercise thereof, the Government have issued the regulations and Regn. 103(d) relevant for the present purpose, reads thus :

"An Officer will not be relieved of his duties until receipt of intimation that his application to retire or resign has been accepted."

An Officer whose application to retire or resign has been accepted may apply to the Central Government for his application to be cancelled. In the case of Officers who have once proceeded on leave pending retirement, permission to withdraw such application will only be granted in "exceptional circumstances". The decision of the Central Government on all applications to retire will be final.

The other clauses are not relevant. Hence omitted. Ss. 191 and 192, the Rules and Regulations would form an integral part occupying the field of voluntary retirement of an officer and the procedure to follow. Though there is slight overlapping in the second and last sentences of Regulation 103(d) and R. 16B(2) there is no inconsistency with rules. It is not necessary to go into the question of the actual field of overlapping. By operation of Regn. 103(d) receipt of intimation by the office that this request for voluntary retirement has been accepted, is necessary and then only he will be relieved of his duties. Till then he is to continue to hold the office and to discharge the duties. Under S. 18 the appellant is entitled to hold the office during the pleasure of the President subject to the provisions of the Act, rules and the regulations. His is one of status. He has his tenure of service until reaches superannuation of 52 years. In the normal course, his tenure cannot be put an end to except either on his attaining superannuation or dismissal or removal from service under S. 19 as a measure of punishment or compulsorily retired, released or discharged under S. 22 of the Act in the manner prescribed under S. 191. Any other way is only an exception. Such an exception is engrafted in R. 16-B and Regn. 103(d) to meet the special situation.

17. In Roshan Lal Tandon Vs. Union of India (UOI), Ramaswamy, J. speaking for the Constitution Bench held that the legal position of a Government servant is one of status and his rights and obligations are no longer determined by consent of both the parties but by a statute and statutory rules. The hallmark of status is the attachment to a legal relationship of the rights and duties imposed by the

public law and not by mere agreement of the parties. The duties of status are fixed by the law and in the enforcement of those duties society has an interest. The paramount consideration for the constitutional mandate under Art. 33 to abrogate, abridge or to take away even the cherished fundamental rights enshrined in Part III thereof to defence personnel in the defence of the country and maintenance of public order for which the armed forces or forces charged with the duty to maintaining public order are to maintain rigorous discipline among them, absolute loyalty to service and devotion to discharge of their duties properly. From this perspective we have to consider the efficacy of the rules and regulations.

18. The contention of the learned Standing Counsel, Mr. Nagaraja Rao is that the moment the request for voluntary retirement is accepted it becomes effective and brings about the cessation of service of the appellant. The relief of him from duty is a ministerial act. The appellant ceased to be in service with effect from 18th May, 1983, viz. the date of acceptance. The delay in communication is inconsequential. He places strong reliance on *Raj Kumar Vs. Union of India (UOI)*, . He fairly conceded that before the order becomes effective, the appellant has an unbridled right to withdraw his letter. Undoubtedly in administrative routine, relieving an officer from duty is a ministerial act. But the focal point is whether such a position is amenable to a defence personnel ?

19. Let us at the threshold peep into the scope and sweep of the Rules and Regulations. Under R. 16B(1) the language used is "shall" i.e., it requires the sanction of the Central Government to the request for voluntary retirement of an officer. The word "shall" normally is not conclusive of mandatory character. But it is to be considered in the setting in which it is used; the object sought to be achieved and the consequences that would ensue. It is not obligatory for the Government to accept such a request. In a given case or situation it is open to the Government either to turn down the request in the national interest, or to permit an officer to voluntarily retire from service and accept such a request. It is now well settled that mere writing something on the file of the Government does not amount to an order. It is open to the Government to reconsider and change their mind. Before something amounts to an order of the Government, two things are necessary. The order has to be expressed in the name of the competent authority and then it has to be communicated. Communication of the order in the proper form is the final act. (Vide *Bachhittar Singh Vs. The State of Punjab*, which was followed in *State of Punjab v. Amarsingh* 1966n II L.L.J. 188. Therefore acceptance of the request for voluntary retirement is mandatory and communication thereof is implicit therein. Therefore, mere noting by the Minister on 18th May, 1983 accepting the request for voluntary retirement does not assume finality till it is communicated by the Army Headquarters on 28th May, 1983. When we read the sub-rule (1) in that light, it would manifest the mandatory character that prior sanction of the Central Government for voluntary retirement from service is a must.

20. Even after making such a request or sanction accorded the officer may have locus poenitentiae and seek to withdraw such a request. In such a situation, sub-rule (2) of R. 16B comes into play. In this sub-rule, the clauses "is granted" and "before he is retired" are significant phrases which throw flood of light. This clause makes it clear that the officer has right to request for withdrawal even after sanction is accorded. The first clause "an officer whose request to retire is granted" when becomes operative is the next question. So long as it is not communicated and received by the officer he is under dark - whether his request for voluntary retirement was acceptable to or sanctioned by the Central Government. The next clause equally meaningful therein to be considered is that "before he is retired" he may apply to the Central Government to withdraw his application. The question, therefore, that looms large is what is the meaning ascribable to the word "is retired" ? In Oxford Concise Dictionary 17th Edition, page 890, it is stated that the word "retire" to mean - "Cease from or give up office or profession or employment, especially on completion of normal time of service." In 20th Mid Centenary Chambers Dictionary at p. 491, it is stated : "To withdraw from..... office..... retired list - a list of officers who are relieved from active service." In Black's Law Dictionary, 5th Edition, p. 1183, it is stated thus : "To terminate employment or service upon reaching retirement age". In Webster's Judicial Dictionary it is stated thus : "To withdraw from office, public business, occupation or active duty; to release from active duty and place on the retired list. Retired list : A list of officers or enlisted men who by reasons of age, length of service relieved from active military service and..... In Corpus Juris Secundum, Vol. 77, P. 330, it is stated thus : "To withdraw from active service." It is equally relevant here to consider the meaning of the word "resignation". It means the spontaneous relinquishment of one's own right. This is conveyed by the maxim : Resignatio est juris proprii spontanea refutatio (See Earl Jowitt's Dictionary of English Law). In relation to an office, it connotes the act of giving up or relinquishing the office. To "relinquish an office" means "to cease to hold the office", or to "loose hold of" the office (cf. Shorter Oxford Dictionary); and to "loose hold of office" implies to "detach" "unfasten", "undo or untie the binding knot of link" "which holds one of the office and the obligations and privileges that go with it. In the general jurisdic sense also, the meaning of "resigning office" is not different." There also, as a rule, both the intention to give up or relinquish the office, and the concomitant act of its relinquishment, are necessary to constitute a complete and operative resignation. (See e.g. American Jurisprudence, 2nd Edition, Vol. 15 at p. 80). Although the act of relinquishment may take different forms or assume a unilateral or bilateral character, it depends on the nature of the office and the conditions governing it. Thus resigning office necessarily involves relinquishment of the office, which implies cessation or termination of or cutting as under from the office. Indeed, the completion of the resignation and the vacation of the office, are mutual and effectual aspects of one and the same event.

21. To this area, Regn. 103(d) supplements the rule and harmoniously occupies

the field. At this juncture, it is necessary to dispose of yet another contention of Mr. Nagaraja Rao that the regulations are only administrative instructions bereft of statutory force and the appellant could lay no base thereon as foundation for his case of actual relief from duty. Absolutely it is devoid of substance. We have already seen the rules and regulations. There is no inconsistency between the rules and regulations except to a minor overlapping in the second and last sentences of Regn. 103(d) and sub-rule (2) of R. 16B, but bears little consequence. S. 192 itself makes clear that regulations are for purposes other than those occupied by rules issued under S. 191. Thereby it is manifest that though the regulations issued under S. 192 do not have the same force of statutory character like the one issued under S. 191, but to the extent there is no inconsistency, the regulations will supplement the rules issued under S. 191 and fill in the yearning gaps therein harmoniously occupying the field and operate conjointly. It is now well-settled that administrative instructions can be issued consistent with the statutory rules (Vide Sant Ram Sharma Vs. State of Rajasthan and Another, , Bishambhar Dayal Chandra Mohan and Others Vs. State of Uttar Pradesh and Others, A. P. Sen, J. speaking for the Court held that instructions conveyed pursuant to the control orders could be considered to be law or an order having the force of law. With respect to the binding character and enforceability of the administrative instructions, Frankfurter, J. in Vitarelli v. Seaton, (1959 359 U.S. held that :

"An executive agency must be rigorously held to the standards by which it professes its action to be judged. Accordingly if dismissal from employment is based on a defined procedure, even though generous beyond the requirement that binds such agency, that must be scrupulously observed. This judicially involved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword."

This principle was approved by the Supreme Court in catena of decisions the latest of which is B.S. Minhas Vs. Indian Statistical Institute and Others, and it was held therein that bye-laws of a Co-operative Society are enforceable. In Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, Bhagwati, J. speaking for the Court held that :

"It is a well-settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them."

In fact for non-observance thereof the action was invalidated. The same is the view of a Full Bench of this Court in Yadaiah v. Government of Andhra Pradesh 1983 1 A.L.T. 233 : In view of the march of the administrative law thus far made and in view of the finding that between the rules and regulations there is no inconsistency in the matter of acceptance of the voluntary retirement and receipt thereof and relief of such an officer, it must be held that Regn. 103(d) supplements R. 16B of the Rules and Regn. 103(d) acquires force of law and

shall be adhered to.

22. The first sentence of Regn. 103(d) is vital to the context i.e., receipt of the intimation that the application of officer to retire (voluntarily from service) has been accepted by the Central Government and then he becomes liable to be "relieved of his duties". Before the axe of relieving falls on his head, due to his exercise of locus poenitentiae, the officer may apply to the Central Government obviously through proper channel seeking to withdraw his request to voluntary retirement. At this juncture let us consider a few hypothetical cases and their consequences. Suppose an Army General or a Brigadier while on active war operation, for his reasons, decides to resign or to retire from service and sends up his application for sanction and may arrange his quick means of private communication of acceptance, before official communication and making alternative arrangements. If the contention of the respondents is given credence to, he is entitled as of right of law, to walk away from the operations leaving the armed forces to quandary or join hands with the enemy camp. The consequences calamitous and an enablement to the enemy to conquer the country. Take a converse case that despite the acceptance of request, as a disciplined soldier an officer like the appellant continues to combat till he receives official communication and kills the enemy soldiers. Does not he expose to the peril of prosecution on the charges of murder, punishable under S. 302 I.P.C. In the case of Court Marshall, does not his decisions expose to invalidity unless recourse is taken to the doctrine of de facto authority.

23. It is a settled rule of statutory interpretation that all the provisions should be harmoniously construed. The Courts should not be prompt to impute, without necessity or sound reasons, tautology or superfluity to the words used in a statute. Rather it should be inclined to give some meaning to every word used since the Legislature used it for a purpose unless it leads to manifest absurdity. Rules are to be construed in the same way a statutes (vide The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya, and a recent decision of this Court in D.K.V. Prasada Rao and Others Vs. Government of Andhra Pradesh, to which one of us (K. Ramaswamy, J.) is a party. If the contention is accepted, apart from it being a negation to the very scheme and object of the Act, Rules and Regulations, does it not render R. 16B(2) a surplusage, superfluity and otiose ? Does it not logically make the right of an officer under R. 16B(2) to withdraw his application before he is retired a nugatory ? When pragmatically considered from any point, our answers to all these questions are in emphatic "Yes". The contention, therefore, bristles with startling disastrous consequences. We have therefore, no hesitation to hold that the intransitive verb "retired" in R. 16B(2) is synonymous to mean actual relief of the officer from active duty or service. The act of "relief" in Regn. 103(d) is an unfastening binding knot of link forming an integral part of the scheme and is an essential act and on such a relief only the right of an officer to hold the office is snapped off and ceases to be on duty or pay of the Government. We hold further that the receipt of the intimation that his request for voluntary retirement was sanctioned is a condition precedent before

he is relieved of his duties. On its receipt the officer may have locus poenitentiae and has a statutory right to retrace the step and withdraw his application. The relief of the officer from duty and the office to fall vacant should be the concomitant acts simultaneously to happen.

24. *Rajkumar v. Union of India*, (supra) is the sheet anchor of Mr. Nagaraja Rao's contention that the order becomes effective from the moment it was accepted by the Minister and Sub-rule (2) of the R. 16B gives discretionary power and in exercise thereof his application requesting for withdrawal was a rightly rejected. Though Mr. Chandrasekhar Rao, learned counsel vehemently contended that the Constitution Bench decision in *Bachitar Singh's* case (supra) prevails over a Bench decision of three judges in *Rajkumar's* case, in the view we are taking, it is needless to go into that topic. Before considering *Rajkumar's* case, it is necessary to consider the ratio in *Jai Ram Vs. Union of India (UOI)*, . Under R. 56 of the Fundamental Rules, the age of superannuation is 55 years. But in case the officer continues to be efficient, he may be retained in service till the age of 60 years. Mr. Jairam on attaining the age of 55 years, applied for voluntary retirement. Though his two earlier applications were rejected, when he persisted, his third application was accepted. He was entitled under the rules to go on leave preparatory to retirement for six months. It was granted and he went on leave. It was to expire on 25th May, 1947 and ten days before the expiry of the leave, on 16th May, 1947, Mr. Jairam sent an application requesting to permit him to resume his duties immediately stating that he had not retired. That request was not acceded to. Then he filed a suit for declaration that the order retiring him from service was wrongful, void and inoperative and that he shall be deemed to be continued in service of the respondent. The trial Court decreed the suit. In the first and second appeals, the decree of the trial Court was upheld and on further Letters Patent Appeal, the Bench dismissed the suit. Thus the appeal on certificate, came up before the Supreme Court. Mukherjea, J. (as he then was) speaking for the Court held thus :

"It may be conceded that it is open to a servant, who has expressed a desire to retire from service and applied to his superior officer to give him the requisite permission, to change his mind subsequently and ask for cancellation of the permission thus obtained; but he can be allowed to do so as long as he continues in service and not after it has terminated."

Since Mr. Jairam accepted the order permitting him to voluntarily retire from service and proceed on leave, it was held that he ceased, to be in service and, therefore, the decree dismissing the suit was upheld. The ratio Their Lordships have laid down is that so long as the Government servant continues in service he has got a right to change his mind and seek for cancellation of the permission earlier obtained. But if he accepted it and proceeded on leave on that premise, he ceases to have such a right after the service stands terminated. This decision was not brought to the notice of the Courts in *Rajkumar's* case. On view of the fact that both sides relied on *Rajkumar's* case, it is necessary to consider in

extenso the facts and the ration laid therein. The appellant Rajkumar was an I.A.S. Officer. He sent an application on 30th August, 1964 requesting the Chief Secretary to the Government of Rajasthan to forward his resignation application to the Government of India for acceptance. Preceding thereto, he has written a letter to the Chief Minister that he was being humiliated from time to time. The Government of India accepted the resignation of the appellant on 31st October, 1964 and directed the State Government to issue formal notification and to intimate the date on which Mr. Rajkumar was to be relieved from his duties. On 27th November, 1964, Mr. Rajkumar changed his mind and requested to permit him to withdraw his letter. The State Government issued formal notification on 29th March, 1965 of the Government of India accepting the resignation of the appellant and he was asked to handover the charge. Mr. Rajkumar challenged that order in the Rajasthan High Court but it was dismissed. On appeal to the Supreme Court, Shah, J. (as he then was) speaking for the Court, held that : at page 15 of Raj Kumar Vs. Union of India (UOI), .

"Where a public servant has invited by his letter of resignation determination of his employment, his services "normally" stands terminated from the date on which the letter of resignation is accepted by the appropriate authority and "in the absence of any law or rule governing the conditions of his service to the contrary", it will not be open to the public servant to withdraw his resignation after it is accepted by the appropriate authority. Till the resignation is accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant has locus poenitentiae but not thereafter. Undue delay in intimating to the public servant concerned the action taken on the letter of resignation may justify an inference that resignation has not been accepted."

25. In that case it was held that since the resignation was accepted within a short time after it was received by the Central Government, though the State of Rajasthan did not immediately implement the order and relieved Mr. Rajkumar of his duties, it was held that he cannot profit by the delay in intimating acceptance or in relieving him of his duties. Regarding the rules relating to relief it was held that they are administrative instructions and not a rule made under Art. 309 of the Constitution and so have no force of law. It was further held that no statutory rule or regulation has been brought to the notice of the Court so as to the date on which the resignation becomes effective. From the above ratio the following propositions would emerge :

(1) When a Government servant sought permission to voluntarily resign from service and was accepted shortly thereafter, his service normally stands determined from the date on which the letter of resignation is accepted by appropriate authority and in the absence of any law or rules having force of law governing the conditions of the service to the contrary it will not be open to the public servant to withdraw his resignation after it is accepted;

(2) till the resignation is accepted, the public servant has locus poenitentiae but not thereafter;

(3) undue delay in intimating acceptance of the request may justify an inference by a public servant that his request has not been accepted.

26. In *Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another*, Mathew, J. was to consider as to when the order of resignation becomes effective. Mr. Kapur, personal Secretary to the Prime Minister resigned from office with effect from the afternoon of 14th January, 1971. The President accepted the resignation and it was notified on 25th January, 1971. It was contended that the notification becomes effective from the date when it was published in the Gazette and till the date Mr. Kapur continued to be in service. Adverting to the effect of the dual relationship of master and servant under the Contract Act, Mathew, J. held thus :

"There is no difficulty at all in accepting the correctness of a resignation effective from the date which both parties to the contract, on patent facts, had agreed to. No rights of an innocent 3rd party were either involved or affected by such an acceptance of the resignation from the date immediately after the date on which Shri Kapur had tendered his resignation. That, as already pointed out was also the date after which he had ceased to work or draw his salary. It is inconceivable that the law should thrust the status of a Government servant upon one who does not want it, particularly when the Government also does not, in public interest, refuse to relieve him by making him stick to any terms to the contrary in his contract. Our Law, on this point is not so monstrous. The position accepted by the learned Judge appears to be quite indefensible."

27. The emphasis laid here is apart from the mutually accepted position between parties, the consequences that would ensue to the innocent third parties and the officer, ceasing to work or drawing pay from Government.

28. In *Bahori Lal Paliwal Vs. District Magistrate, Bulandshahr and Another*, , a Full Bench was called upon to consider whether a Municipal Councillor in the absence of rules had a right to withdraw his resignation before its acceptance by the District Magistrate. In considering that question Bhargava, J. (as he then was) per minority, has held at Para 37 thus :

"When a Government servant applies for permission to retire and permission is granted by the superior authority, the servant is still to retire. If he actually retires, he cannot thereafter, go back upon it. Having merely asked for permission to retire, it cannot be held that he has actually applied for retirement. Subsequent to the grant of permission to retire, he is still to exercise his option either to retire or not to retire; and if he changes his mind and chooses to continue in service and does not apply for retirement after availing of the permission granted, he cannot be compelled to retire.

In *Y.K. Mathur and Another Vs. The Commissioner Municipal Corporation of Delhi*, , the question that fell for consideration was as to when the resignation of a Councillor becomes effective. The Councillor resigned with a future date. It was contended that it becomes effective from the date of resignation. While considering that question Rajindar Sachar, J. speaking for the Bench held thus :

"Under S. 33(1)(b) of the Delhi Municipal Corporation Act, both the resignation and the vacancy of the seat are effective from the same date. There cannot be different times, one for resignation and the other for vacation of seat. Vacancy will only occur when resignation is effective, and if it is from future date both resignation and vacation of seat will be effective simultaneously. We cannot accept the argument of the counsel for the petitioners that it is possible to split up the act of resignation and the vacancy of the seat into such separate compartments."

29. The ratio points that the effect of the act and the resultant vacancy should occur simultaneously. In *Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others*, ; Justice Satish Chandra of the Allahabad High Court (as he then was) sent resignation to the President under his hand dated 7th May, 1977 to the office of the Judge of the High Court to be effective at a future date. Subsequently on 15th July, 1977, he sent another letter requesting to revoke and cancel his intention to resign in his letter dated 7th May, 1977. The latter letter was sought to be declared as null and void in a writ proceeding and it was accepted by the Allahabad High Court. On appeal, Sarkaria, J. speaking for the majority accepted the ratio of the Delhi High Court in para No. 62. After considering the ratio in *Jai Ram's* case and *Rajkumar's* case, it was held in Para No. 51 thus :

"If in terms of the writing under his hand addressed to the President, he (Satish Chandra, J.) resigns in praesenti the resignation terminates his office-tenure forthwith and cannot, thereafter be withdrawn or revoked thereafter. But, if he by such writing, chooses to resign from a future date, the act of resigning office is not complete because it does not terminate his tenure before such date and the judge was at any time before the arrival of that prospective date of which it was intended to be effective to withdraw it, because the Constitution does not bar such withdrawal."

Even the minority view of Fazal Ali, in para No. 93 reads thus :

Where a resignation given by a Government servant is dependant for its effectiveness on the acceptance by the appropriate authority, the Government servant concerned has an unqualified right to withdraw the resignation until the same is accepted by the authority. In other words, the position is that where the resigner has a right to resign but the resignation can be effective only after acceptance, it is a bilateral act. That is to say, resignation by one authority and acceptance of the resignation by the other authority. Unless the two acts are completed, the transaction remains in an inchoate form. That is to say a resignation sent by a servant is no resignation in the eye of law until accepted by the employer and so long as it is not an effective resignation there can be no bar to withdrawing the same."

30. From the above consideration, the following conclusions could safely be deduced : Where a request has been made by a Government servant to

voluntarily resign or retire from service, acceptance thereof is a condition precedent. It becomes effective in terms of the statutory rules or instructions having the force of law. In its absence normally it becomes effective from the date of its acceptance by the competent authority. The communication thereof is mandatory. The acceptance becomes effective in the eye of law only on its service on the officer and thereafter becomes liable to be relieved from duty. No rights of the third parties are involved or affected by the acts of the officer in the interregnum. Relieving an officer from duty brings about cessation of his right to hold the office. Before he is relieved, the government servant has locus poenitentiae to withdraw his application requesting voluntary retirement. Permission for cancellation can be allowed so long as he continues to be in service and not after it was terminated or relieved or ceased to discharge his duties and drawing his salary. From this perspective, we hold that mere acceptance of the request of the appellant for voluntary retirement is not conclusive. Its communication is mandatory and it becomes effective from the date of its service, viz., 2nd July, 1983 by which date the appellant has already withdrawn his letter i.e., on 27th May, 1983. This finding denudes the second sentence in R. 16(2) to swing into action and robs of its effect. Therefore the request for withdrawal and yet passing an order on 19th October, 1983 rejecting it became redundant and void. Thereby the subsequent direction of the appellant to proceed on leave too became inconsequential and is of no effect.

31. This problem could also be angulated from the annuls of the contractual relationship of master and servant. Under S. 4 of the Indian Contract Act, 1873, the communication of proposal (request for acceptance of voluntary retirement) is complete when it comes to the knowledge of the person (first respondent) to whom it is made. The communication of an acceptance is completed as against the proposer (appellant) when it is put in a course of transmission to him, so as to be out of the power of the acceptor, as against the acceptor when it comes to the knowledge of the proposer. The communication of a revocation is complete as against the person who makes it when it is put into a course of transmission to the person to whom it is made so as to be out of the power of the person who makes it; as against the person to whom it is made, when it comes to his knowledge. Under S. 5, a proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards. A reading of these two sections makes the position manifest that the communication of an acceptance is complete as against the appellant when it is put in the course of transmission to him so as to be out of the power of the respondents and the proposal may be revoked at any time before the communication of its acceptance is complete as against the appellant. Chitty on Contracts, 23rd Edition, under general principles, in para No. 48 at page 49, stated that the general rule is that the acceptance must be communicated to the offeror. This is, however, subject to certain exceptions. The most important is that acceptance is complete as soon as it is posted. This rule was hedged with limitations. In S. 64, at page 63, the learned author postulates that the rule that

acceptance is complete on posting would probably not apply if, owing to the negligence of the offeree the letter of acceptance is wrongly addressed or inadequately stamped and in consequence is delayed or lost in post. But while the acceptance would not be complete on posting, it would be complete if and when the letter of acceptance reached the offeror provided of course that offer still remained open for acceptance and had not lapsed or been revoked. In Anson's Law of Contract, 24th Edition, it is also stated that acceptance becomes effective from the date of posting and this rule is an exception to the general rule and at page 38 it is stated that acceptance means in general communicated acceptance and amounts to communication and unquestionably, as a general proposition when an offer is made, it is necessary in order to make a binding contract, not only it should be accepted, but that acceptance should be notified. At page 40, it is further stated that acceptance is not complete unless and until it is communicated to the offeror. It is stated further that justification for the rule relating to communication is that the offeror is entitled to know whether or not a binding contract has been concluded by acceptance. In Cheshire and Fifoot's Law of Contract, Tenth Edition, it is stated at page 44 that acceptance is incomplete until received by the offeror. If no particular method is prescribed the form of communication will depend upon the nature of the offer and the circumstances in which it is made. In *Carlill v. Carbolic Smoke Ball Co.* (1893) 1 QB 256 Lindley L.J. held that :

"Unquestionably, as a general proposition when an offer is made, it is necessary in order to make a binding contract not only that it should be accepted, but that the acceptance should be notified."

In the same case, at page 269, Bowen L.J. said :

"One cannot doubt, that as an ordinary rule of law, an acceptance of an offer made ought to be notified to the person who makes the offer, in order that the two minds may come together. Unless this is done the two minds may be apart and there is not the consensus which is necessary according to English Law."

In *Entores Ltd. v. Miles Far East Corporation* (1955) 2 QB 327 CA a case of contract on telex communication, Denning M.R. at page 334 held that the contract is only complete when the acceptance is received by the offeror. Birkett L.J. also stated the same view. Parket, L.J. at page 336 also took the same view. Professor Willington of America in his *Contracts*, S. 82 at page 239 expressed the same opinion. Professor Winfield in a considered article - "Some aspects of offer and acceptance" (by post) (1939) 55 LQR 499) considered Anglo American, Continental, Indian Law and other countries and opined at page 516 that every case must be considered on its own facts and at page 514 said that Anglo American view may be better suited. Professor Hudson in his notes on "Retraction of Letters of Acceptance" (1966) 82 LQR 169 opined that "if a settled rule is required it is better found in allowing retraction rather than in prohibiting it". We hasten to add that we are not concerned with commercial transaction in which this finer question arose. In *Raghunandhan Reddy Vs. State of*

Hyderabad, , Jaganmohan Reddy, J. (as he then was) speaking for the Bench held :

"A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards. Before an offer is accepted, the offeror can withdraw his offer."

Thus, even under the contractual plane the appellant has rightly withdrawn his proposal before its acceptance was communicated to him. The approval given by the Minister on 18th May, 1983 did not become effective till it was communicated and was received by the appellant on 2nd July, 1983, by which date he has already submitted an application dated 27th May, 1983 withdrawing his application for voluntary retirement and it is also completed since it went out of his control. Thus by operation of their statutory rules or under contractual relations, the acceptance of the request for voluntary retirement dated 28th May, 1983 is void, inoperative and inconsequential. The order dated 19th October, 1983 rejecting the application for withdrawal also is illegal and void. These two orders are, accordingly, hereby quashed. The respondent is directed to consider to give effect to the promotion of the appellant as Asst. Lt. Colonel as approved by the Promotion Committee in December, 1982. The appellant is entitled to all the consequential benefits pursuant thereto.

32. In view of the above conclusion, the decisions relied on by Mr. Chandrasekhara Rao, viz., *Oriental Fire and General Insurance Co. Ltd. Vs. Mrs. Kamal Kamini Das and Others*, ; *Pikasalingam v. State* need no extensive consideration. Accordingly, the writ appeal is allowed and the Rule Nisi is made absolute, but in the circumstances, each party is directed to bear their own costs through out.

33. Sri Nagarajarao, the learned Standing Counsel for the Central Government makes an oral application to leave to appeal to the Supreme Court. In our view, no substantial question of law arises in this case, which requires to be considered by the Supreme Court. Hence leave is refuse.