

(2003) 02 SC CK 0077

In the Supreme Court Of India

Case No : Civil Appeal No's. 1050-1051 of 2003

P. Lal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-02-2003

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14, 19, 3
All India Services (Death-Cum-Retirement Benefits) Rules, 1958 — Rule 16(2A)

Citation : AIR 2003 SC 1499 : (2004) AIRSCW 121 : (2003) AIRSCW 849 :
(2003) 3 ALLMR 1180 : (2003) 96 FLR 1188 : (2003) 1 JT 649 : (2003) 2 LLJ
164 : (2003) 1 SCALE 644 : (2003) 3 SCC 393 : (2003) SCC(L&S) 289 : (2003)
1 SCR 846 : (2003) 2 SLJ 1 : (2003) 1 Supreme 9

Hon'ble Judges : S. S. M. Quadri, J;S. N. Variava, J

Bench : Division Bench

Advocate : Nidhesh Gupta and Deepesh Aneja, for S. Janani, for the Appellant;
Ram Jethmalani and L. Nageswara Rao, Sushil Dutt Salwan and Ruby Singh
Ahuja for Respondent No. 3, Mukul Rohtagi, A.S.G., Raju Ramachandran, A.S.G.,
Ashok K. Srivastava and Sushma Suri for Respondent No. 1, R.S. Suri, Ajay
Bansal, Dy. Advocate Genl. and Jagjit Singh Chhabra, for the Respondent

Final Decision : Allowed

Judgement

S.N. Variava, J.—Leave granted.

2. These Appeals are against a Judgment dated 4th July, 2001.

3. Briefly stated the facts are as follows:

4. Respondent No. 3 worked in the Research and Analysis Wing (RAW) of the Government of India from 1982 to September 1990. With effect from October 1990 Respondent No. 3 was repatriated to the State of Punjab. He did not join duty till 30th September, 1991. On 24th October 1991, i.e. 23 days later, Respondent No. 3 applies for Ex-India leave. Even before the leave could be sanctioned Respondent No. 3 leaves India and goes to England. From England he again applies for further leave. Leave is sanctioned till 10th January, 1992.

Respondent No. 3 is informed that no further extension would be granted even on medical grounds. Respondent No. 3 still does not join duty. He then sends in, on 30th June, 1992, an application for voluntary retirement. However, on 19th July, 1992, he sends a telegram withdrawing his application for voluntary retirement. As Respondent No. 3 continues to remain absent he was charge-sheeted on 14th January, 1993. On 12th April, 1993 he reports for duty in the office of the D.G.P., Punjab.

5. On 5th May, 1993 he again applies for voluntary retirement with immediate effect. He deposits Rs. 30,870/- in lie of three months' advance notice. Respondent No. 3 does not even wait for his application to be accepted. he again goes away abroad. As Respondent No. 3 had applied for voluntary retirement DGP, Pubjab recommends that the charge-sheet against him be withdrawn. On 27th September, 1993 the Government of India rejects the request for voluntary retirement on the ground that three months' notice period had not been given. The Government of Punjab by its representations dated 29th September, 1993 and 8th July, 1994 requests the Government of India to accept the application for voluntary retirement. This request is again turned down by the Government of India on 13th September, 1994. As Respondent No. 3 was not even in India and was not reporting for duty the Government of Punjab, on 29th November, 1994, points out to the Government of India that Respondent No. 3 has not been attending office since 5th May, 1993 and that his three months' notice period may be considered from the date of application i.e. 5th May, 1993 and he may be allowed to voluntary retirement. On 2nd March, 1995 the Government of India permits Respondent No. 3 to retire from service with effect from May, 1993. It may be mentioned that in the meantime, on the recommendation of the D.G.P., Punjab, the charge-sheet had been dropped against Respondent No. 43. This was done in view of the fact that he was retiring voluntarily.

6. In his application for voluntary retirement, Respondent No. 3 had given his contact address as follows:

"Sh. R.K. Sharma, R-862, New Rajinder Nagar, New Delhi - 110 060."

The order of the Government of India dated 2nd March, 1995 permitting Respondent No. 3 to retire from service was forwarded to Respondent No. 3 at the above mentioned address. It was however received back undelivered from the postal authorities with the remarks "despite repeated visits, could not be delivered to addressee as he was not available". The D.G.P., Punjab therefore deposes a Constable to deliver the Order to Respondent No. 3. When the Constable goes to the above address the father-in-law of Respondent No. 3 states that no officer by name R.K. Sharma stays in this house. The father-in-law further states that he knows nothing about R.K. Sharma.

7. On 18th April, 1995 Respondent No. 3 withdraws his request for voluntary retirement. Significantly, the address given in his letter is the above mentioned address. This shows that Respondent No. 3 was purposely evading receipt of

Government Order dated 2nd March, 1995. On 20th June, 1995 the Government of India rejects his request for withdrawal of voluntary retirement on the ground that the period within which such request could be made had already expired. By his letter dated 20th July, 1995 and 4th March, 1996 Respondent No. 3 again requests the Government of India to allow him to withdraw his application for voluntary retirement. Surprisingly, on 14th August, 1997, the Government of India accepts the request of Respondent No. 3 for withdrawal of voluntary retirement.

8. At this stage it must be mentioned that documents brought on record show that between the period 15th March, 1996 and 12th August, 1997 Respondent No. 3 took up employment with a foreign firm by Name M/s. California Designs and Constructions Inc. and represented the firm, as its director, before various departments of the Government of Punjab and the Government of Haryana. It is being assumed that Respondent No. 3 concealed this fact from the Government of India and that the Government of India accepted his request for withdrawal of voluntary retirement in ignorance of this fact.

9. The Appellant therefore approached the Central Administrative Tribunal against re-induction of Respondent No. 3 into service. The Appellant claims that by such re-induction his seniority in the cadre gets affected. The Government and Respondent No. 3 contested the application. Before the Central Administrative Tribunal it was urged that the Appellant had no locus to challenge the action of the Government in permitting Respondent No. 3 to withdraw his application for voluntary retirement. It was also urged that the Central Administrative Tribunal had no jurisdiction. The Central Administrative Tribunal negated both these contentions. The Central Administrative Tribunal holds that Respondent No. 3 having left without waiting for his application to be sanctioned and Respondent No. 3 having taken up employment with a foreign company amounted to severance of the relationship of master and servant. It was held that as the severance had attained finality the Government of India had no jurisdiction to pass the impugned order dated 14th August, 1997. It was held that the effect of the Order was to give lateral entry into service which was not permissible. It was held that Respondent No. 3, by his conduct, having severed the relationship of master and servant could not now be allowed to come back into service. By its Order dated 3rd February, 1998 the Central Administrative Tribunal quashes the Order dated 14th August, 1997 allowing Respondent No. 3 to withdraw his voluntary retirement.

10. Respondent No. 3 as well as the Government of India file Writ Petitions in the Punjab & Haryana High Court challenging the order dated 3rd February, 1998 passed by the Central Administrative Tribunal. On 10th September, 1998 these Writ Petitions were taken up for admission. At that stage a statement is made on behalf of Respondent No. 3 (herein that he will not claim seniority over the Appellant (herein)).

11. During the pendency of the Writ Petitions, the Government of India produces

an affidavit of one Malkait Singh Sidhu who claimed that he was President of M/s. California Designs and Construction Inc. In the affidavit it was claimed that Respondent No. 3 was not a Director in this Company. It was claimed before the High Court that Respondent No. 3 had not taken employment with this firm. That this was a false stand came to light after arguments in the two Writ Petitions were over. The High Court has, in the impugned judgment, set out what happened. The relevant portion reads as follows:

"Before proceeding further, we deem it proper to mention that after conclusion of the arguments, Shri P. Lal filed C.M. 27489-50 of 2000 in C.W.P. No. 6196 of 1998 for placing on record additional affidavit dated 18.11.2000 along with Annexure R1/26 to R1/29 to show that between 1995 and 1997, Shri R.K. Sharma had actively represented M/s. California Designs and Construction INC for the purpose of award of contract for construction, erected and commission of ten sewage treatment plants under Yamuna Action Plan. He also filed C.M. No. 27491-92 of 2000 in C.W.P. No. 6461 of 1998 for placing on record additional affidavit dated 18.11.2000 and documents Annexure R3/26 to R3/29, C.M. No. 28355-56 of 2000 was also filed on behalf of Shri R.K. Sharma for placing on record his affidavit dated 27.11.2000 and documents Annexures P35 to P40 to show that he was no longer Director of M/s. California Designs and Constructions India Ltd.

We may also mention that while hearing C.W.P. No. 14542 of 2000 filed by M/s. California Design and Construction India Ltd. for quashing the action taken by the income tax authorities to recover tax from the payment made to it by the Government of Haryana, counsel representing the petitioner in that case had produced a copy of the agreement entered into between his client and the State of Haryana which was signed by Shri R.K. Sharma on behalf of the petitioner-company as its director and he had represented to the Government of Haryana that he was the Managing Director of the said company. After taking note of this, we had directed the listing of these petitions for further consideration. On 20.11.2000, counsel appearing for Union of India in C.W.P. No. 6461 of 1998 sought adjournment to place on record an affidavit on behalf of Government of India explaining its position on the issue of employment of Shri R.K. Sharma. Thereafter, Shri R.K. Mitra, Deputy Secretary, Ministry of Home Affairs, New Delhi filed an affidavit dated 25.11.2000 stating therein that the Government of India never made a statement that Shri R.K. Sharma had not taken employment with a foreign company. At the same time, he averred that it is for the State Government to take appropriate action in the matter."

12. This shows that Respondent No. 3 had attempted to mislead the High Court of Punjab and Haryana. He obviously had also mislead the Government of India by getting them to file, before the High Court of Punjab and Haryana, the affidavit of Malkait Singh. In any event now the Government of India and the Government of Punjab know that Respondent No. 3 had not just absented himself from duty but had in fact taken up employment with a foreign firm and

represented it with various departments of the State Government. Their conduct in continuing to side with Respondent No. 3 is to say the least surprising.

13. The High Court, after considering the submissions of the parties, negatives the contentions that the Appellant did not have locus. It is held that the Central Administrative Tribunal had jurisdiction. The High Court has adversely commented upon the conduct of Respondent No. 3 in going abroad without prior permission; in remaining absent for such a long time, in taking up employment with a foreign company. The High Court then holds that as the order of the Government of India dated 2nd March, 1995 was not communicated to Respondent No. 3 the relationship of master and servant continued. It is held that Respondent No. 3 was therefore entitled to treat himself as continuing in service and was not even required to submit an application for withdrawal of his request for voluntary retirement. The High Court holds that the decision of the Government of India to allow Respondent No. 3 to withdraw the request for voluntary retirement cannot be termed as illegal or vitiated due to want of jurisdiction. The Writ Petitions were accordingly allowed. The High Court however directed that disciplinary proceedings be held against Respondent No. 3. Even though, on 10th September, 1998 a statement had been made that Respondent No. 3 would not claim seniority over the Appellant, the High Court in the impugned Order has held as follows:

"In the result, the writ petitions are allowed. Order dated 3.2.1998 passed by the Tribunal is set aside. This shall be subject to the direction that Shri R.K. Sharma shall not be assigned seniority over Shri P. Lal and other officers, who had been promoted during his absence from duty till the government takes a comprehensive decision on the allegations of his absence from duty, going abroad without prior permission, taking up employment with a foreign company and joining the Board of Directors of a company registered in India and he is exonerated in the departmental enquiry, if any, held in these matters."

Thus now the High Court has left it open for Respondent No. 3 to claim seniority if he is exonerated in the departmental enquiry or if the departmental enquiry is dropped. As is being set out hereinafter there is already a proposal to drop the departmental enquiry.

14. At this stage it is appropriate to mention that after notice was issued on these SLPs Respondent No. 3 filed an affidavit in this Court in which he inter alia states as follows:

"Due to the malicious and selfish conduct of the Petitioner and the State, the answering respondent was left with no other option but to believe that his request for withdrawal of voluntary retirement has been rejected and, therefore, the petitioner took up an employment in a private firm in an honorary capacity, from 28.3.1996 to 12.8.1997.

xxx xxx xxx V. The allegation that the answering respondent immediately on submitting his application for voluntary retirement worked with M/s. California

Design and Construction Inc. U.S.A. as Managing Director is not admitted and hence denied. It is further submitted that the answering respondent did not take any employment in India in any company, concern or firm till 28.3.1996. It is however submitted that on recovery from his ill-health and in absence of any response to his application for voluntary retirement, the answering respondent filed an application dated 18.4.1995 to withdraw the request for voluntary retirement and the same was rejected by Union of India on 20.6.95. The answering respondent herein was left with no option but to take a job in a private firm in India in honorary capacity to keep himself occupied. The said employment was only for a short period from 28.3.1996 to 12.8.1997.

xxx xxx xxx It is submitted that the answering respondent took an employment in a private firm in India in an honorary capacity on 28.3.1996, as he neither received any reply to various representations made by him for withdrawal of request for voluntary retirement nor was given any posting order till 18.8.98. It is submitted that Union of India erroneously passed the order dated 20.6.1995 due to lack of correct and true information furnished by the State Government. The State Government illegally, erroneously and unilaterally severed the master servant relationship. The State Government's following actions, made the answering respondent come to the conclusion that his services are no more required by the authorities:-

- i) No posting order given to the answering respondent pursuant to his joining report dated 18.4.1995.
- ii) For all administrative and practical purposes, the State Government struck off the name of the answering respondent from the Punjab IPS Cadres Gradation List.
- iii) No salary given to answering respondent during the period 5.5.1993 to 18.8.1998.
- iv) Eight letters issued from 26.6.1995 to 4.4.1997 by State Government declaring answering respondent has retired from service. (emphasis supplied)

It is further submitted that the answering respondent on the basis of sequence of events and conduct of parties was compelled to believe that his employment in a private organization would not violate any rules as he had been retired by the State Government. Accordingly, the State Government or for the matter the petitioner cannot have any grievance on that account and are estopped from making such reckless allegations."

15. The Appellant has now produced a letter dated 15th March, 1996 addressed by Respondent No. 3 as a Director of M/s. California Design and Construction INC. to the Superintendent Engineer to the Public Health Circle, Faridabad. This shows that even on 15th March, 1996 Respondent No. 3 was a director of this foreign firm. His statement of oath before this Court that he took employment with effect from 28th March, 1996 is shown to be patently false. It is clear that

he was employed with the foreign firm even prior to 28th March, 1986.

16. Before we consider the arguments it is important to set out certain other facts. Respondent No. 3 had also filed a SLP before this Court challenging that portion of the impugned judgment which held that the Appellant had locus; that the Central Administrative Tribunal had jurisdiction and the directions to hold a disciplinary enquiry against him. The SLP was dismissed by an Order dated 10th December, 2001. This Court however clarified that the enquiry must be conducted without being influenced by any observations made by the High Court. Thus so far as Respondent No. 3 is concerned the findings in the impugned judgment, that the Appellant had locus and that the Central Administrative Tribunal had jurisdiction, have become final.

17. In this Special Leave Petitions by Order dated 11th January 2002, this Court stayed the impugned Judgement. This necessarily meant that the Judgment of the Central Administrative Tribunal became effective again. The effect of the order of the Central Administrative Tribunal is that Respondent No. 3 ceased to be in service. In view of the above position the Principal Secretary to the Government of Punjab, by an Order dated 23rd January, 2002, held that Respondent No. 3 ceased to be in service with immediate effect in view of the order of this Court. Surprisingly another Principal Secretary, one Mr. S.K. Singh, by an Order dated 31st March, 2002 withdraws the earlier order dated 23rd January, 2002. Respondent No. 3 immediately assumes charge as Inspector General of Police on 31st March, 2002. By an Order dated 18th April, 2002 he is posted against the vacant post of ADGP/Internal Vigilance Cell to look after the Litigation Wing and Internal Vigilance Cell. On 10th May, 2002 these facts are then brought to the notice of this Court. This Court therefore directs the Principal Secretary to state on affidavit as to how the Order dated 31st March, 2002 came to be passed in violation of the order passed by this Court on 11th January, 2002. The Principal Secretary has filed an affidavit dated 13th June, 2002 stating that the earlier Order of 23rd June, 2002 had been passed by the Principal Secretary to the Government of Punjab, but that on a representation submitted by Respondent No. 3 it was found that the power to relieve an officer from service rests with the Government of India and not with the Government of Punjab. It was stated that it was found that the Order dated 23rd January, 2002 was without jurisdiction and deserved to be withdrawn and was therefore withdrawn. It was stated that the subsequent order was passed after obtaining legal advice. The reasoning given is entirely untenable. The effect of the order of the Central Administrative Tribunal was that Respondent No. 3 ceased to be in service. Respondent No. 3 was not being relieved by Order dated 23rd January, 2002. The Order dated 23rd January, 2002 merely informed Respondent No. 3 that he had ceased to be in service. In any event, in view of the stay order, Respondent No. 3 could not have been given a posting order. By an Order dated 24th May, 2002, the posting order of R.K. Sharma has been held in abeyance pending decision in these Appeals. But Respondent No. 3 is still allowed to continue in service in breach of an interim order of this Court and in violation of

the order of the Central Administrative Tribunal.

18. One last fact which requires to be mentioned is that as per the direction of the High Court a charge-sheet has been issued against Respondent No. 3 on 27th September, 2001. As has now become common for Respondent No. 3, he again applies for voluntary retirement on 10th October, 2001. The D.G.P. again recommends that the charge sheet be dropped as he has applied for voluntary retirement. Following the recommendation for dropping of the charge sheet Respondent No. 3 has, on 26th November, 2001, again withdrawn his request for voluntary retirement.

19. The submissions of the parties have to be considered in the light of the above facts.

20. Mr. Jethmalani submitted that Respondent No. 3 is from the 1967 Batch of I.P.S. Officer, whereas the Appellant is from the 1969 Batch, i.e. two years junior to him. He submitted that it is for the Government to decide whether or not to accept the request of Respondent No. 3 for withdrawal of voluntary retirement. He submitted that the Appellant had no locus to challenge the action of the Government in accepting the request for withdrawal of voluntary retirement. He submitted that the Central Administrative Tribunal had no jurisdiction to entertain the Petition filed by the Appellant. He submitted that u/s 14 of the Administrative Tribunals Act, 1985, the Tribunal exercises such jurisdiction as was exercised by the Courts earlier. He submitted that it is settled legal position that the Court only protect legal rights. He submitted that mere expectations or accidental windfalls do not give any right and Courts would not protect claims based on expectations or accidental windfalls. He submitted that Section 19 of the Administrative Tribunal Act provides that it is only a "person aggrieved" who can file an application before the Tribunal. In support of his submission he relied upon the cases of Thammanna Vs. K. Veera Reddy and Others, and Bar Council of Maharashtra Vs. M.V. Dabholkar and Others, , wherein it has been held that a person aggrieved must be a man who has suffered a legal grievance i.e. a man who has been wrongfully deprived of something or to whom something has been refused wrongfully. He also relied upon the case of Mohammad Shujat Ali and Others Vs. Union of India (UOI) and Others, , wherein it has been held that the right to promotion is not the same thing as a mere chance to promotion. He submitted that the Appellant is basing his expectations on an accidental windfall by hoping that Respondent No. 3 would not be in service. Mr. Jethmalani submitted that the Appellant is not a person aggrieved in as much as he has no real right to claim seniority over Respondent No. 3. He submitted that the Appellant has not been deprived of anything. He submitted that in any event the Appellant's complaint that his seniority would be affected, has been protected and, therefore, the Appellant can no longer have any complaint regarding seniority.

21. We are unable to accept the submissions of Mr. Jethmalani. As has been pointed out hereinabove, against the portion of the impugned judgment which

held that the Appellant had locus and that the Central Administrative Tribunal had jurisdiction, Respondent No. 3 had filed a Special Leave Petition. That has been dismissed by this Court on 10th December, 2000. It is therefore not open to Respondent No. 3 to again raise these contentions. These findings in the impugned judgment have become final as against Respondent No. 3. Even otherwise, we see no substance in these submissions.

22. Section 3(q) of the Administrative Tribunals Act defines "service matters" as follows:

"(q) "service matters", in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation or society owned or controlled by the Government, as respects -

- (i) remuneration (including allowances), pension and other retirement benefits;
- (ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;
- (iii) leave of any kind;
- (iv) disciplinary matters; or
- (v) any other matter whatsoever."

Thus, amongst other things, the question of seniority is a matter which is a service matter. Section 14 vests in the Tribunal the jurisdiction, power and authority earlier exercised by Courts, amongst others, in respect of service matters. As admitted by Mr. Jethmalani if Respondent No. 3 is allowed to remain in service he would be senior to the Appellant. The Appellant's seniority would be affected. If in fact Respondent No. 3 has ceased to be in service the question of seniority between Appellant and Respondent No. 3 would not arise. Thus Appellant can legitimately point out that Respondent No. 3 has ceased to be in service. Thus Appellant's claim is not based on mere expectations or accidental windfall. The Appellant is a person aggrieved and has locus. Even otherwise, as has been explained in great detail, both by the Tribunal as well as the High Court, the Tribunal had jurisdiction to entertain the application filed by the Appellant. Merely because Respondent No. 3 made a statement before the High Court that he would not claim seniority would not be a ground for holding that the Tribunal had no jurisdiction. A statement made in a Writ Petition before the High Court would not deprive the Appellant of locus and/or the Tribunal of jurisdiction.

23. Mr. Jethmalani next submitted that a public servant has a right to withdraw his request for voluntary retirement at any time until the retirement becomes effective. He submitted that the relationship of master and servant does not come to an end until the same is terminated. He submitted that the relationship

of master and servant does not get severed or ruptured merely because the employee conducts himself in a manner which gives to the employer a right to bring about a severance. He submitted that unless and until the employer takes some positive action and severs the relationship of master and servant the same would continue. He further submitted that an IPC Officer is appointed by the President of India. He submitted that the appointment is notified in the official Gazette and thus the removal can only be accomplished in a similar manner i.e. by a Presidential Order duly notified in the Official Gazette. He submitted that mere notings in the official files or mere administrative orders do not have the effect of severing the relationship of master and servant.

24. Mr. Jethmalani submitted that even if it is held that acceptance of a voluntary retirement need not be by a Presidential Order duly notified in the Gazette, even then the relationship of master and servant would not come to an end unless and until there is effective communication of the order accepting the request for voluntary retirement. He submits that a termination would take place automatically on the happening of a particular situation, for example absence from office, abundant of service etc. only if there is a specific rule which so provides. He submitted that in the absence of such a rule termination of service does not take place automatically. He relied upon Sub-rules (2) and (2A) of Rule 15 of the All India Services (Death-cum-Retirement) Rules, 1958 which read as follows:

"16. Superannuation gratuity or pension.- (1) A member of the Service shall be required compulsorily to retire from the service with effect from the afternoon of the last day of the month in which he attains the age of 58 years:

Provided that he may be retained in service after the last day of the month in which he attains the age of 58 years on public grounds which, shall be recorded in writing-

(a) for an aggregate period not exceeding six months by the State Government; and

(b) for any period beyond six months, with the sanction of the Central Government;

Provided further that a member of the Service shall not be retained in service beyond the age of 60 years except in very special circumstances.

(2) A member of the service may, after giving at least three months' previous notice in writing, to the State Government concerned, retire from service on the date on which such member completes thirty years of quantifying service or attains fifty years of age or on any date thereafter to be specified in the notice:

Provided that no member of the Service under suspension shall retire from service except with the specific approval of the Central Government.

(2A) A member of the service may, after giving three months' previous notice in

writing to the State Government concerned retire from service on the date on which he completes 20 years of qualifying service or any date thereafter to be specified in the notice:

Provided that a notice of retirement given by a member of the service shall require acceptance by the Central Government if the date of retirement on the expiry of the period of notice would be earlier than the date on which the member of the service could have retired from service under Sub-rule (2):

Provided further that a member of the Service, who is on deputation to a corporation or company wholly or substantially owned or controlled by the Government or to a body controlled or financed by the Government, shall not be eligible to retire from service under this rule for getting himself permanently absorbed in such corporation, company or body.

He submitted that at the relevant time Respondent No. 3 had not completed 30 years of service or attained 50 years of age and therefore Sub-rule (2) would not have been applicable. He submitted that under Sub-rule (2A) the notice for voluntary retirement would not take effect until it was accepted by the Central Government. He submitted that acceptance could only take place if there was effective communication of the acceptance.

25. Mr. Jethmalani relied upon the case of Shambhu Murari Sinha Vs. Project and Development India and Another, . In this case the question was whether it is open to a person having exercised the option of voluntary retirement to withdraw his application before it is made effective. Relying upon earlier Judgments of this Court, it was held that the voluntary retirement, in spite of its acceptance, can be withdrawn before the effective date. Mr. Jethmalani also relied upon the case of Bank of India and Others Vs. O.P. Swarnakar etc., wherein also it is held that a request for voluntary retirement can be withdrawn before it becomes effective. He submitted that the Government's Order dated 2nd March, 1995, accepting the request for voluntary retirement, had not been communicated to Respondent No. 3. He submitted that Respondent No. 3 was therefore entitled to withdraw his request for voluntary retirement. He submitted that the application of Respondent No. 3 dated 18th April, 1995 (withdrawing his request for voluntary retirement) was prior to the retirement becoming effective as till that date the Government's order had not been communicated to him. He submitted that the High Court was right in holding that the relationship of master and servant had continued. Mr. Jethmalani relied upon the affidavit filed by the Union of India in this Court on 21st March, 2002, wherein it has been averred that the order accepting voluntary retirement had not become effective as the same had not been served on Respondent No. 3 before he withdrew his request for voluntary retirement. Mr. Jethmalani pointed out that even according to the Government of India the relationship of master and servant had not been terminated. He pointed out that by an Order dated 27th February, 1997 leave has been sanctioned to Respondent No. 3. Mr. Jethmalani also relied upon an affidavit dated 2nd April, 2002 filed by the State of Punjab, wherein it has been stated

that gazette notification of a retirement order is mandatory. Mr. Jethmalani submitted that it was an admitted position that in this case there was no gazette notification. At this stage itself it must be pointed out that this stand taken by the State of Punjab, on oath, is contrary to the stand taken by them, on oath, in an affidavit filed by them before the Punjab & Haryana High Court on 13th November, 1998. In that Affidavit it is inter alia stated as follows:

"No grounds are available to the petitioner to challenge order passed by the CAT:-

a) The order passed by the Central Administrative Tribunal is proper valid and depict the correct interpretation of law. The petitioner himself wanted his voluntary retirement to be effective with immediate effect vide notice/application dated 5.5.93. Intention of petitioner was clear when he deposited 3 months salary in lieu of notice. His voluntary retirement was accepted by Government of India and order issued to this effect were intimated through the answering respondent and Director General of Police, Punjab at his last notified address. The orders were also published in the Newspapers.

b) The order of the acceptance of voluntary retirement was twice sent to the last notified address of the petitioner where he was not found available. It appears that the petitioner intentionally had given wrong address. The acquittance of voluntary retirement was duly published in the news-papers. There is no requirement/practice to get the order of retirement published in the official Gazette." (emphasis supplied)

26. Mr. Jethmalani submitted that it was for the Government of India to decide whether or not to condone absence from duty. He submitted that Respondent No. 3 was a very good officer who had an unblemished record. He submitted that there was nothing wrong in the Government of India condoning minor lapses on the part of such a good officer and retaining him in service. Mr. Jethmalani submitted that as the Government of India desired to retain the services of such a good officer and as Respondent No. 3 now had only 2 more years of service left, this Court should not pass any adverse order. Mr. Jethmalani also suggested that Respondent No. 3's stay abroad and work with the foreign firm were part of an assignment given to him. He suggested that it is for this reason that the Government of India was bound to regularise leave and retain Respondent No. 3 in service.

27. As against this Mr. Gupta submitted that the conduct of Respondent No. 3 in leaving India without waiting for the Government to accept his request for voluntary retirement and thereafter taking an employment with foreign firm indicates that Respondent No. 3 had abandoned the service. He submitted that by his own conduct there was severance of relationship of master and servant. He submitted that in any event withdrawal of request for voluntary retirement can only be within the notice period. He submitted that the notice period was only for 3 months. He submitted that the effective date within which the request for voluntary retirement could be withdrawn was only 3 months. He submitted

that in any event by Order dated 2nd March, 1995, the Government of India had accepted the request of Respondent No. 3 and permitted him to retire from service. He submitted that on such acceptance the relationship of master and servant came to an end. He submitted that thereafter Respondent No. 3 could not be permitted to withdraw his request for voluntary retirement. He submitted that the case that Respondent No. 3 had been sent abroad and/or asked to work for a foreign firm cannot be believed.

28. We have considered the submissions of both the parties. As has been set out, in Shambhu Murari's case and Bank of India's case, an employee can withdraw his application for voluntary retirement before the effective date. The effective date would necessarily be the date on which the retirement takes effect. The request, which Respondent No. 3 had made by his letter dated 5th May, 1993, was to be allowed to retire voluntarily with immediate effect. He had also deposited Rs. 30,870/- in lieu of three months' notice. Thus so far as Respondent No.3 was concerned the effective date was 5th May, 1993. Of course Rule 16(2A) of the All India Services (Death-cum-Retirement) Rules, 1958 provides that a notice of retirement had to be accepted by the Government of India. In this case, the Government of India accepted the request on 2nd March, 1995 and permitted Respondent No. 3 to retire with effect from May 1993. The moment Government of India accepted the notice the retirement became effective. The relationship of master and servant came to an end. We are unable to accept the submission that the relationship of master and servant did not terminate till the acceptance was communicated to Respondent No. 3 It must be remembered that Rules 16(2) and 16(2A) enable a member to retire from service on giving the required notice. Once such a notice is given it merely has to be accepted by the Government of India. The moment it is accepted the retirement would become effective. If any other view is taken it would lead to absurd results. Such a view would mean that even though a member had given a notice for voluntary retirement stopped attending office and/or gone away abroad and/or taken up some other employment after a number of years of absence the member could claim to come back into service because the Government, for some unforeseen reasons, had not communicated its acceptance. Taken to its absurd length such a member could after superannuation claim that, as the services were not terminated, he was entitled to pension and gratuity on the basis that he had continued in service. The requirement of communication of acceptance would only arise in cases where, even after giving of a notice of voluntary retirement the member continues to work/perform his duties. In such cases the member would need to know from what date he can stop attending office. In cases where the member has by his own conduct abandoned service the severance of the relationship of master and servant takes place immediately on acceptance of notice. We are unable to accept the submission that the severance of relationship of master and servant cannot take effect until there is an Order by the President of India and the same is duly notified in the Gazette. Rules 16(2) and 16(2A) have been set out hereinabove. All that it requires is acceptance by the

Government of India and not by the President of India. Admittedly the request of voluntary retirement has been accepted by the Government of India on 2nd March, 1995. No provision or rule could be shown which requires such acceptance to be gazetted. On the contrary, as has been set out hereinabove, in its affidavit before the Punjab & Haryana High Court, the Government of Punjab had categorically stated that there was no provision for gazetting such an order.

29. That the relationship of master and servant had been severed is clear from the affidavit filed by Respondent No. 3 in this Court. The relevant portion has been reproduced hereinabove. Even according to Respondent No. 3 no posting order had been issued to him. According to Respondent No. 3 the Government of India and struck off, his name from the Gradation list, no salary was paid to him and 8 letters have been issued declaring that he has retired from service.

30. We are unable to accept Mr. Jethmalani's submission that, Respondent No. 3 had been sent abroad and asked to take up employment with a foreign firm by the Government. There is no proof of such a case. Neither the Government of India nor the Governments of Punjab/Haryana state that this was so. This appears to us to be an argument in desperation.

31. In view of the above it is held that the High Court erred in coming to the conclusion that the relationship of master and servant had not been terminated. As has been set out hereinabove, the relationship of master and servant had been terminated before Respondent No. 3 sought to withdraw his request for voluntary retirement on 18th April, 1995. Once relationship of master and servant had been served and/or terminated, by this back door method, Respondent No. 3 could not get back to service. The Order of the Government of India dated 14th August, 1997 cannot be sustained and was correctly quashed by the Central Administrative Tribunal. In this view of the matter the impugned Judgment requires to be and is hereby set aside. The Order of the Central Administrative Tribunal dated 3rd February, 1998 is restored.

32. Mr. Gupta had raised various other submissions. In the view that we have taken it is not necessary to set out or deal with those submissions.

33. Accordingly the Appeals are allowed with costs.

34. In view of what has happened in the past it needs to be clarified that Respondent No. 3 has ceased to be in Government service with effect from May 1993 in the rank/position that he then held. There is now no necessity of issuing an order terminating his service. All that is required is correction of official record if they purport to show that Respondent No. 3 has continued in service. So far as Respondent No. 3 is concerned, this Judgment and Order of Central Administrative Tribunal are notice to him that his request for voluntary retirement dated 5th May, 1993 has taken effect from May, 1993. It goes without saying that with effect from May 1993 Respondent No. 3 would not be entitled to any pay or any other consequential benefits. It is expected that if any pay and/or benefits have been given to him the same would be returned/reimbursed by him

so that the concerned Government is not forced to recover the same.